CLERK'S COPY.

1 166

Pat

TRANSCRIPT OF RECORD

85 S.Ct.
U.S.

Supreme Court of the United States

OCTOBER TERM, 1936 7

No. 779

NOLEN R. BREEDLOVE, APPELLANT,

vs.

T. EARL SUTTLES, AS TAX COLLECTOR

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED MARCH 4, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 777

NOLEN R. BREEDLOVE, APPELLANT,

vs.

T. EARL SUTTLES, AS TAX COLLECTOR

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

INDEX.

	Original	Print
Record from Superior Court of Fulton County	1	1
Petition	1	1
Exhibit "A"—Form of oath	17	13
Exhibit "B"—Formal demand upon tax collector	18	14
Exhibit "C"—Reply of tax collector to formal demand	20	16
Exhibit "D"—Compilation showing population of States, voting requirements, etc.	21	16
Order to show cause	23	18
Summons and return	24	19
Amendment to petition	25	20
Amendment to petition	31	24
Order dismissing case	34	26
Clerk's certificate (omitted in printing)	34	
Bill of exceptions and order thereon	36	26
Pauper affidavit	39	29
Proceedings in Supreme Court of Georgia	41	29
Judgment	41	29
Opinion, Beck, J.	42	30
Petition for appeal	51	37
Assignments of error	55	38
Order allowing appeal	58	40
Citation and service (omitted in printing)	60	
Bond on appeal (omitted in printing)	61	
Præcipe for transcript of record	79	41
Clerk's certificate (omitted in printing)	87	
Statement of points to be relied upon and designation as to printing record	88	43

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 3, 1937.

—8909-C

[fol. 1]

IN SUPERIOR COURT OF FULTON COUNTY

PETITION—Filed March 20, 1936

To the Superior Court of Said State and County:

The petition of Nolen R. Breedlove respectfully shows:

1. That T. Earl Suttles is the tax collector of Fulton County, Georgia, being a resident of said County, and these mandamus proceedings are instituted against him as defendant in his capacity as tax collector of said State and County.

2. That petitioner is a white male citizen of the United States of America, being twenty-eight years of age, and having resided in Fulton County, Georgia, for more than seven years next preceding the filing of this petition.

3. That on the 16th day of March, 1936, petitioner went to the office of defendant tax collector for the purpose of registering to vote in the primaries and general election to be held during this year for the election of a President of the United States, Members of the Upper and Lower House of the Congress of the United States, Governor of Georgia and members of the General Assembly of this State.

4. That petitioner informed John L. Fuller, Deputy Clerk in charge of the registration book in defendant tax collector's office, that he desired to have the voters' oath administered to him without any reference being made to the payment of poll tax, for that he had not paid any poll tax since he became twenty-one years of age; that he desired to vote in said elections to be held this year; whereupon the said clerk refused to comply with petitioner's demand, [fol. 2] stating that the only oath which he was authorized to administer was the regular printed form required of all persons desiring to register, a copy of said oath being attached hereto as Exhibit A, and that he could and would not administer the said customary oath to him unless petitioner had paid all past due poll taxes assessed against him, which said clerk stated was in the approximate amount of $13.50.

5. Whereupon, petitioner presented to T. Earl Suttles as tax collector of said county, a formal demand in writing that he be administered the voters' oath with no reference therein to the payment of poll tax and that he be allowed to register, a copy of said demand being hereto attached as Exhibit B.

6. That defendant tax collector refused to comply with petitioner's formal demand, and then and there confirmed said verbal refusal by denying the request and demand of petitioner in writing, a copy of defendant tax collector's reply being attached hereto as Exhibit C.

7. That defendant tax collector refused to administer the voters' oath to petitioner and refused to allow him to register upon the ground that petitioner had not paid poll taxes for the past seven years in the approximate amount of $13.50 as required under Article II, Section 1, paragraph 3 of the constitution of Georgia, as amended, said paragraph being as follows:

"Par. III. Who entitled to register and vote. To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of [fol. 3] the time fixed by law for the payment of such taxes. (Acts 1908, pp. 27, 28, ratified Oct. 7, 1908; Acts 1931, pp. 102, ratified Nov. 8, 1932)."

8. That defendant tax collector refused to administer the voters' oath to petitioner and refused to allow him to register upon the further ground that petitioner had not paid poll tax for the past seven years in the amount aforesaid as required under sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, said sections of the Code of this State being as follows:

"34-103. Form of Oath Required to Qualify Elector.

The oath to qualify an elector shall be as follows:

"I do swear, or affirm, that I am a citizen of the United States; that I am 21 years of age, or will be on the — day of —— of this calendar year; that I have resided in this State

for one year, and in this county for six months, immediately preceding the date of this oath, or will have so resided on the day of —— of this calendar year; *that I have paid all poll taxes which I have had an opportunity of paying agreeably to law;* that I possess the qualifications of an elector required by the constitution; and that I am not disfranchised from voting by reason of any offense committed against the laws of the State. I further swear, or affirm, that I reside in the — district, G. M., or in the — ward of the city — of —, at number — on — street; my age is —, my occupation —." (Acts 1894, pp. 116; Acts 1908, pp. 58; Acts 1913, pp. 115; Const. * * *, Art. II, Sec. I, par. II) (Sec. 2-603).

"34-113. Registration Dependent upon Payment of Taxes Six Months before Election. No one shall be allowed to register for a general election unless he shall have paid all poll taxes due by him at least six months before the date of [fol. 4] the election." (Acts 1908, pp. 58, Const. * * *, Art. II, Sec. 1, Par. II (Sec. 2-603).

"34-114. Tax Collector must be satisfied applicant entitled to register. No tax collector shall allow any person to sign his name in the voters' book unless he is satisfied, at the time, that the poll taxes due by said voter are paid and that he is otherwise qualified." (Acts 1894, pp. 115, 117. Const. * * *, Art. II, Sec. i, Par. II (Sec. 3-603).

"92-108. Poll Tax; Exemptions. There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1, which shall be used for educational purposes in instructing children in the elementary branches of an English education only: Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting." (Acts 1927, pp. 57).

9. That so much of said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in Paragraph 3 above is in conflict with, contrary to and in deroga-

tion of even the Preamble to the Constitution of the United States, said Preamble being as follows:

"We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure Domestic Tranquil-ity, provide for the common defense, promote the General Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

[fol. 5] 10. That so much of said Article II, Section I, Paragraph 3, of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of article I, Section 8, Paragraph 1 of the Constitution of the United States, said paragraph being as follows:

"Powers of Congress. The Congress shall have power.

I. Taxes. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

II. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article I, Section 9, Paragraph 4 of the Constitution of the United States, said paragraph being as follows:

"Capitation or other Direct Tax. No capitation or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

12. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections [fol. 6] 34-103, 34-113, 34-114 and 92-108 of the Code of

Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking office as enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article IV, Section 2, Paragraph 1 of the Constitution of the United States, said paragraph being as follows:

"Citizens Privileges. The Citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States."

13. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article VI, Section 2, of the Constitution of the United States, said section being as follows:

"Constitution and Treaties as the Supreme Law.
This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, and [Sic] Thing in the Constitution or Laws of any State to the contrary notwithstanding."

14. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections [fol. 7] 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article XIV, Section 1 of the Constitution of the United States, said section being as follows:

"Citizenship. (Section 1). All persons born or naturalized in the United States, and subject to the jurisdiction

thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

15. That so much of said Article II, Section I, Paragraph 3, of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as the prerequisite of the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in paragraph 3 above is in conflict with, contrary to and in derogation of Article XV, Section 1 of the Constitution of the United States, said section being as follows:

"Right of Citizens to Vote. (Section 1.)
The right of citizens to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

16. That so much of said Article II, Section 1, Paragraph [fol. 8] 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article XIX, Section 1 of the Constitution of the United States, as amended, said section being as follows:

"Equal Suffrage. (Section 1.) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

17. That so much of Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Section 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates

seeking the offices enumerated in Paragraph 3 above, being in conflict with, contrary to and in derogation of the Preamble; Article I, Section 8, Paragraph 1; Article I, Section 9, Paragraph 4; Article IV, Section 2, Paragraph 1; Article VI, Section 2; Article XIV, Section 1; Article XV, Section 1, and Article XIX, Section 1 (as amended) of the Constitution of the United States, are likewise in conflict with, contrary to and in derogation of Article XII, Paragraph 1 of the Constitution of this State, said paragraph being as follows:

"Supreme Law.—The laws of general operation in this State are, first; As the Supreme Law: The Constitution of the United States, the laws of the United States in pursuance thereof and all treaties made under the authority of the United States."

[fol. 9] 18. That there are only nine States in the United States which required the payment of poll taxes as a prerequisite to the right of citizens to vote for the candidates enumerated in Paragraph 3 above; that an average of only eleven per cent. of the population, as shown by the census of 1930, of said States having such laws voted in the General Elections of 1932 in which the President of the United States, Members of the Congress of the United States, Governors and Members of the General Assembly in said nine States were elected.

19. That in the remaining thirty-nine States of the United States in which the payment of poll taxes is not a prerequisite to the right of citizens of the United States and of the several States to vote for candidates seeking the offices above mentioned, there was an average of thirty-nine per cent. of the population, as shown by the census of 1930, who voted in said General Election, of 1932.

20. That only twelve per cent. of the population of Louisiana, as shown by the census of 1930, voted in the General Elections of 1932, at which time the payment of poll taxes was a prerequisite to the right of citizens to vote in that State, and that since the repeal of said poll tax law there were approximately thirty per cent. of the population who voted in the primary election, held January 21st, of this year.

21. That in the said nine States where the payment of poll tax is required before citizens may register and vote, only

six to nineteen per cent. of the population, based upon the 1930 census, voted for the candidates for the offices enumerated in Paragraph 3 above in the General Elections of 1932, whereas in the same elections in the States not requiring the payment of poll taxes as a prerequisite to registering and voting from twenty-two to forty-eight per cent [fol. 10] of the population cast their votes.

22. That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and the laws above quoted which were enacted in pursuance thereof, impose a penalty and a burden upon the citizens of the United States residing in Georgia who desire to vote for the President and the Members of the Congress that are not required of citizens of thirty-nine other States throughout this Nation.

23. That the method provided for collecting and enforcing the payment of said poll tax is not by levy and pursuit as are all other forms of taxation provided for under the Constitution of the United States, the Constitution of Georgia, and all laws enacted in pursuance thereof, but is through the process of injunction and restriction against the rights of citizens of the United States residing in this State to vote for the President and the Members of the Congress.

24. That according to the average vote in States which do not require the payment of a poll tax as a prerequisite to that privilege, inasmuch as only eight per centum of Georgia's population, based upon the census of 1930, voted int he General Elections of 1932, the said poll tax laws have disfranchised approximately thirty-one per cent. of the citizens of the United States residing in this State who in the absence of a poll tax would have cast their ballots.

25. That said poll tax laws of Georgia, not being uniform throughout the States of the Union, deprive the citizens of the United States residing in Georgia of the privileges and immunities enjoyed by the citizens of the several other States in the exercise of their inherent right of franchise to vote for persons elected and to be elected to administer the affairs of our National Government.

[fol. 11] 26. That Section 92-108 of the Code of Georgia, exacted in pursuance of said poll tax provision in the Constitution of this State, exempting persons above the age of

sixty from the payment of said tax and granting privileges to the female inhabitants not enjoyed by the male residents between the ages of twenty-one and sixty is discriminatory and denies to petitioner the equal protection of the laws within the jurisdiction of this State guaranteed by the Constitution of the United States.

27. That said poll tax laws of this State were born in iniquity and nurtured by the Feudal Lords of this State into a vehicle in the form of a full grown Constitutional amendment upon which the Tories have for generations been riding in luxury while far in excess of the majority of the population, being disfranchised from voting by reason of poverty, have remained in a helpless state of hunger and want without even the privilege of participating in the selection or election of the officials of our Government from the President of the United States to the least important office of the State.

28. That with only eight per centum of the population of Georgia participating as voters in the election of our Federal and State officials, as aforesaid, autocracy and tyranny have reigned supreme over the poor people of this section of our great Nation, the like of which caused Washington and his army to throw off the yoke placed upon our forefathers by the Crown of England and prompted the adoption of the Constitution of the United States, for the preservation of the sacred provisions of which this proceeding is instituted in the hope that not only your petitioner but six or seven times as many citizens of the United States residing in this State as ever voted before may become enfranchised and henceforth enjoy the privileges and immunities [fol. 12] of persons residing in thirty-nine of the other States of the Union, and which a free people of right under a democratic form of government should enjoy, in the election of a President and Members of the Congress of the United States.

29. That in the General Elections and primaries to be held in this State during this year, candidates for the offices of President of the United States, Members of the Upper and Lower House of Congress, Governor and Members of the General Assembly of this State will be elected, and by reason of petitioner's inability and failure to pay said poll taxes required under the laws of this State as set out above,

he has been denied the right to register and vote by defendant Tax Collector.

30. That as a result of the existence of the laws of Georgia and the facts upon which the other allegations of this petition are based, petitioner has been reduced to a condition of virtual servitude within the meaning of Article XV, Section 1 of the Constitution of the United States, for that he is without property and dependent upon his labor for sustenance and does not have the right under the present system and his poverty stricken condition to fix the amount of his earnings, but is dependent upon such pittance as might be handed to him almost as a master would treat a slave, and without the right to vote he does not enjoy any greater privilege and immunities from his Government than did the slaves, for the enfranchising of whom said section was enacted as an amendment to the Constitution of the United States.

31. That petitioner has no adequate legal remedy to enforce and protect his rights under the Constitution of the United States except through the process of these mandamus proceedings against defendant as Tax Collector of Fulton County, Georgia, who is in full and absolute charge of the [fol. 13] voters' registration books under Section 34-101 of the Code of Georgia, said section being as follows:

"34-101. Tax Collectors required to keep books. Oath of Voters. The tax collectors of the several counties are required to keep a book to be called the permanent qualification or voters' book, upon which all persons desiring to qualify as electors shall be required to qualify as required by the constitution and laws of this State. Said book shall contain, on the first page thereof, or near the first page, the oath required to qualify an elector." (Acts 1894, p. 116; Acts 1908, pp. 58; Acts 1913, pp. 115.)

32. That less than eight per cent. of the population of Georgia voted in the election in which Article II, Section 1, Paragraph 3 of the Constitution of Georgia was amended, the original Constitutional provision having required the payment of both poll tax and all other forms of taxes of every nature whatsoever as a prerequisite to the right of citizens to vote, and by reason of said original Constitutional provision restricting the right of suffrage, when the present poll tax amendment to the Constitution was adopted, far

in excess of the majority of the population was disfranchised from voting; that the question whether the citizens of the United States residing in this State should or should not pay a poll tax as a prerequisite to the right to register and vote was never submitted to the people, but the question of whether the payment of all taxes of every nature whatsoever or only the poll tax as a prerequisite to the right to register and vote was the question submitted when the amendment now of force was submitted to about eight per cent. of the population and approved by a little more than two-thirds of that number of the registered voters.

33. That for the ready convenience and reference of the Court to the voting statistics in the several States of the [fol. 14] Union upon which the foregoing percentages are based, petitioner attaches hereto as Exhibit D a compilation of figures showing the population in the forty-eight States, as shown by the census of 1930, and the number of votes cast in the General Elections of the several States in which the President and Members of the Congress were elected in November of 1932, which said compilation of figures as Exhibit D also shows the States which require the payment of a poll tax as a prerequisite to the right to register and vote and the States which do not have such a law in their statutes.

34. That for reasons herein above set out, in each and every provision of said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, the rights, privileges and immunities of petitioner under the provisions of the Constitution of the United States as quoted in paragraphs 9, 10, 11, 12, 13, 14, 15 and 16 herein and Article XII, Section 1 of the Constitution of this State as quoted in Paragraph 17 above, have been abridged and denied, for that:

(a) Said laws are in violation and defiance of the General Welfare and the Blessings of Liberty provisions guaranteed Posterity in the Preamble of the Constitution of the United States;

(b) They are not uniform throughout the United States;

(c) They lay a capitation and direct tax upon petitioner in violation and defiance of Article I, Section 9, Paragraph 4 of the Constitution of the United States;

(d) They impose a financial tax burden upon the head of petitioner, the payment of which is a prerequisite to register and vote in the election of the President and mem- [fol. 15] bers of the Congress of the United States which is not required of citizens of thirty-nine other States of the Union;

(e) Said Georgia laws, being in violation and defiance of the several provisions of the Constitution of the United States herein above set out, are, therefore, in violation and defiance of Article VI, Section 2 of the Federal Constitution which proclaims and declares the provisions thereof to be the Supreme Law of the Land;

(f) They are in violation of that provision of Article XIV, Section 1 of the Constitution of the United States which declares the- "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws.";

(g) They are in violation and defiance of Article XV, Section 1 of the Constitution of the United States which forbids the passage of any law that denies or abridges the right of citizens to vote by reason of race, color or previous condition of servitude, for that by reason of facts herein above alleged, petitioner has been and is still in a virtual condition of servitude and poverty, and being thereby unable to pay said taxes, has been deprived of the inherent right to vote;

(h) They grant special privileges to female inhabitants of this State with respect to said taxes which are denied to petitioner;

(i) They are in violation and defiance of Article XII, Paragraph 1 of the Constitution of Georgia, which recognizes the Constitution of the United States as the Supreme Law of the Land;

(j) They are discriminatory for that they exempt persons above the age of sixty from paying said taxes as a prere- [fol. 16] quisite to voting and require the payment thereof by petitioner before he can register and vote;

(k) The method of collecting said taxes is through the process of prohibition, injunction and restriction against

the right of petitioner to register and vote in the elections above mentioned.

35. That for reasons herein above set out said Article II, Section 1, Paragraph 3, of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof are void as being in conflict with, contrary to and in derogation of the foregoing Articles of the Constitution of the United States and should be so declared and adjudged by this Court.

Wherefore, petitioner prays:

(a) That process issue requiring and directing defendant to appear in response to these proceedings as by law provided in such cases;

(b) That a mandamus nisi do issue directing defendant to show cause why the prayers of petitioner should not be granted;

(c) That upon hearing a mandamus absolute be granted;

(d) That Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and all of said laws enacted in pursuance thereof as enumerated in these proceedings, be declared null and void as being in conflict with, contrary to and in derogation of the Constitution of the United States as set out herein;

(e) And for such other and further relief as the ends of justice may require in the premises.

J. Ira Harrelson, Attorney for Petitioner.

[fol. 17] EXHIBIT "A" TO PETITION

GEORGIA,
Fulton County:

I do swear, or affirm that I am a citizen of the United States, that I am twenty-one years of age or will be on the — of this calendar year; that I have resided in this State for one year and in this county for six months, immediately preceding the date of this oath, or will have so resided on the — of — of this calendar year; that I have paid all Poll taxes which, since the adoption of the Constitution

of 1877, have been required of me, (including) (except) taxes for this year; that I possess the qualifications of an elector required by the Constitutional amendment adopted in 1908, and that I am not disfranchised from voting by reason of any offense committed against the laws of this State. I further swear, or affirm, that I reside in the — Ward of the City of Atlanta, at No. — on — Street, or in the — District, G. M.; my age is —; my occupation is —.

(Sign here) ——.

Sworn to and subscribed before me, this — ——, ——, ——, Registrar.

[fol. 18] EXHIBIT "B" TO PETITION

Law Offices, J. Ira Harrelson

Twenty-Two Marietta Street Building, Atlanta, Ga.

Phone Walnut 2044.

Associates: John V. Deegan, Pat J. Avery, S. J. Goodman.

March 16, 1936.

Mr. T. Earl Suttles, as Tax Collector, Fulton County, Georgia,

Fulton County Court House, Atlanta, Georgia.

DEAR SIR:

On this date I appeared at the voters' registration window in the Fulton County Court House for the purpose of registering to vote in the primaries and general election to be held during this year in which election qualified candidates for the offices of President of the United States, Members of the Lower and Upper House of Congress of the United States, Governor and Members of the General Assembly of Georgia are to be elected.

I have been a bona fide resident of Fulton County, Georgia, for more than seven years. I have neither made a poll tax return to the Tax Collector or any other tax officer of this County or State during said period, nor have I paid any poll taxes to the County or State, nor have I registered to vote by reason of the fact that a poll tax receipt show-

ing that my poll taxes for a period of seven years have been paid and also an oath that I have paid the same are required as prerequisites to registration.

I am a white male citizen, twenty-eight years of age, and have complied with and am qualified to register and [fol. 19] vote under all the laws of the State of Georgia except that provision of our laws which requires the payment of a poll tax and that I give an oath "that I have paid all poll taxes which I have had an opportunity of paying agreeable to the law;" that I have demanded of your registration clerk in charge of the registration book in the office of the tax collector that I be privileged to take the required oath under Section 34-103 of the Code of Georgia of 1933 with said poll tax payment provision eliminated therefrom; and your registration clerk of said registration book refused to administer the voters' oath to me with said poll tax provision stricken and without a poll tax receipt and denied me the privilege of registering.

This letter is, therefore, written to make formal demand upon you to administer to me the following oath which meets every requirement of Section 34-103 of said Code of Georgia of 1933 and all other election laws of Georgia except that part requiring the payment of a poll tax as a prerequisite to vote, to wit:

"I do swear, or affirm, that I am a citizen of the United States; that I am over twenty-one years of age; that I have resided in this State for one year, and in this County for six months, immediately preceding the date of this oath; and that I am not disfranchised from voting by reason of any offense committed against the Laws of the State. I further swear, or affirm, that I reside in the Second Ward of the City of Atlanta, at Number 23 of Fair Street, S. E.; my age is twenty-eight, my occupation "Georgia State Adjutant of the United States War Veterans, Inc., and Advertising Manager of the Inedpendent Veteran."

I contend that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, described as Section 2-603 of the Code of Georgia of 1933, and Sections 34-103, 34-113 and 34-114 of said Code of Georgia are in conflict with, contrary [fol. 20] to and in derogation of Article IV, Section 2, Paragraph 1; Article XIV, Section 1; Article 1, Section 8, Paragraph 1; Article VI, Section 2 and Article 1, Section 9,

Paragraph 4 of the Constitution of the United States for the following reasons, to wit:

Because said sections of the Georgia Constitution and Code require that I pay seven years past due poll taxes before I can register and vote, which I am unable to pay; because said poll tax requirement is contrary to and in derogation of the foregoing sections of the Federal Constitution; because they are contrary to public policy and the welfare of our people of our nation; because they defeat the principles of democracy as intended by the founders of our American Government; because they restrict the rights of a free people; because they impose restrictions and penalties upon citizens desiring to vote; because they impose a tax on the heads of citizens which is neither levied nor collected as are all other forms of taxes; because the enforcement of their provisions constitute an injunction and restriction against the right of suffrage; because they impose penalties on citizens and voters of Georgia not required of citizens and voters of more than two-thirds of the other States of the United States in the exercise of their right to vote for the President of the United States and Members of the Congress of the United States; and for other reasons.

Very truly yours, Nolen R. Breedlove.

EXHIBIT "C" TO PETITION

Mar. 16, 1936.

Mr. N. R. Breedlove, 22 Mtta. St. Bldg., Atlanta, Georgia.

[fol. 21] DEAR SIR:

You have this day demanded that I register you without my requiring of you the usual oath for registration so far as it pertains to the payment of poll tax. Under the Constitution and laws of Georgia, I must respectfully refuse your request.

Yours very truly, T. E. Suttles, Tax Collector.

Exhibit "D" to Petition

State Without Tax	1930 Pop.	1932 Votes Polled	Percentage
Arizona	435,573	118,251	27.1
California	5,677,251	2,266,845	39.9
Colorado	1,035,791	457,696	44.2
Connecticut	1,606,903	594,183	36.8
Delaware	238,380	112,902	47.3
Idaho	445,032	186,520	41.9
Illinois	7,630,654	3,407,926	44.1
Indiana	3,238,503	1,575,282	48.6
Iowa	2,470,939	1,036,683	41.9
Kansas	1,880,999	791,978	42.1
Kentucky	2,614,589	983,063	37.8
Maine	797,423	298,444	37.4
Maryland	1,631,526	510,054	31.2
Massachusetts	4,249,614	1,580,043	37.1
Michigan	4,842,325	1,664,628	34.3
Minnesota	2,563,953	1,002,843	39.1
Missouri	3,629,367	1,609,894	44.3

[fol. 22]

Montana	537,606	216,479	40.3
Nebraska	1,377,963	570,135	41.4
Nevada	91,058	41,430	45.4
New Hampshire	465,293	205,520	44.2
New York	12,588,066	4,688,614	37.2
North Carolina	3,170,276	711,410	22.4
North Dakota	680,846	256,290	37.6
Ohio	6,646,697	2,610,088	39.2
Oklahoma	2,396,040	704,633	29.4
Oregon	953,786	368,751	38.6
Pennsylvania	9,631,350	2,858,986	29.7
Rhode Island	687,497	266,170	38.7
South Dakota	692,849	288,438	41.6
Utah	507,847	206,579	40.0
Vermont	359,611	136,978	38.0
Washington	1,563,396	664,514	42.5
West Virginia	1,729,205	743,774	43.1
Wisconsin	2,939,006	1,114,808	37.8
Wyoming	225,565	96,963	42.9

Exhibit D—Continued

State Having Poll Tax	1930 Pop.	1932 Votes Polled	Percentage
Alabama	2,646,248	245,034	9.2
Arkansas	1,854,482	118,251	11.9
Florida	1,468,211	276,252	18.8
Georgia	2,908,506	255,590	8.7
Mississippi	2,009,821	145,340	7.2
South Carolina	1,738,765	104,407	6.0
Tennessee	2,616,556	390,638	14.8
Texas	5,824,715	863,392	14.8
Virginia	2,421,851	298,242	12.3
Louisiana (Repealed 1934)	2,614,589	268,271	12.7

[fol. 23] *Duly sworn to by Nolen R. Breedlove. Jurat omitted in printing.*

In Superior Court of Fulton County

Order to Show Cause—Filed March 20, 1936

The foregoing read, considered, sanctioned and ordered filed.

It is further ordered that a copy thereof together with a copy of this Order be served upon T. Earl Suttles, as tax collector of Fulton County, Georgia, the defendant named in said proceedings.

It is further ordered that said defendant be and appear before the Judge presiding over the Motion Division of this Court at 9:00 a. m. on Saturday, April 2, 1936, then and there to show cause why a mandamus absolute should not be issued against him as prayed in this petition, and further relief be granted as the facts of the case may warrant.

[fol. 24] It is further ordered that in default of such appearance and showing the mandamus prayed for will be made absolute and the petition will be accorded such relief as it may show it is entitled to.

This the 19th day of March, 1936.

John D. Humphries, Judge Superior Court, Atlanta Circuit.

IN SUPERIOR COURT OF FULTON COUNTY

SUMMONS AND RETURN—Filed March 20, 1936

NOLEN R. BREEDLOVE, Complain-t

versus

T. EARL SUTTLES, as Tax Collector of Fulton County, Georgia

To the Sheriff or His Deputy, of said County, Greeting:

The defendant is hereby required, personally or by attorney to be and appear at the Superior Court, to be held in and for said County, on the first Monday in May, 1936, then and there to answer the Plaintiff's complaint, as in default thereof said court will proceed, as to justice shall appertain.

Witness, the Honorable John D. Humphries, Judge of said court, this 20 day of Mch., 1936.

C. M. Paschal, Deputy Clerk.

[File endorsement omitted.]

GEORGIA,
Fulton County:

I have this day served the defendant T. Earl Suttles, tax collector, personally with a copy of the within petition and process & order.

This Mar. 20, 1936.

S. C. Wooten, Deputy Sheriff.

[fol. 25] IN SUPERIOR COURT OF FULTON COUNTY

No. 110888

NOLEN R. BREEDLOVE

vs.

T. EARL SUTTLES, as Tax Collector

Mandamus Proceedings

AMENDMENT TO PETITION—Filed April 15, 1936

Now comes petitioner in the above captioned proceeding, and by leave of the Court first had, files this his amendment to his original petition by showing the following:

1. Petitioner amends his original petition by adding as Paragraph 36 immediately following Paragraph 35, the following:

"That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are void for that they are in conflict with, contrary to and in derogation of the following clause of Article IV, Section 4 of the Constitution of the United States, to wit:

'Republican Form of Government. The United States shall guarantee to every State in this Union a Republican Form of Government, * * *,' for that said laws of Georgia restrict the voting privileges of the citizens of this State to eight per cent. of the population, the effect of which is to maintain an autocratic rather than a republican or democratic form of government as contemplated and guaranteed by the Constitution of the United States."

2. Petitioner amends his original petition by adding as Paragraph 37, the following:

"That the said Georgia laws are in conflict with and in derogation of the Supreme Law of the Land which defines the word 'liberty' contained in the Fourteenth Amendment to the Constitution of the United States as not only embracing the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his [fol. 26] faculties as well, and by reason of petitioner's

inability to pay said poll tax and the inability of approximately thirty-one per cent of the remaining population of Georgia to pay the same, petitioner and other citizens are deprived of and denied the free enjoyment of all their faculties pertaining to the exercise of their choice in the election of the Members of Congress and the President of the United States."

3. Petitioner amends his original petition by adding as Paragraph 38 the following:

"That the right of all citizens to participate as electors under a republican form of government in the election of persons to represent the entire population of the United States being one of those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' is embodied in the concept 'due process of law' in the Fourteenth Amendment to the Constitution of the United States, and said right of franchise unhampered by and unrestricted by a 'head, capitation or direct tax' is protected under the 'due process of law' and other provisions of the Constitution of the United States herein cited against the hostile State invasion of that fundamental principle of liberty to vote, which lies at the base of all our civil and political institutions of government, of which Congress and the Executive Branch of the Federal Government are paramount."

4. Petitioner amends his original petition by adding as Paragraph 39 the following:

"That as set forth in the original petition enumerating the population and votes cast in the several States of the Union and showing that only eight per cent of Georgia's population voted in 1932 while an average of thirty-nine per cent voted in States not requiring the payment of a poll tax as a prerequisite to voting, said Georgia laws curtail and restrict electors of their right to vote in said national elec- [fol. 27] tions; that if said poll tax were increased to a high degree, as it could be if valid, it well might result in almost destroying the right of suffrage in its entirety by reducing the number of votes to even less than eight per cent. of the population of this great Empire State of the South."

5. Petitioner amends his original petition by adding as Paragraph 40 the following:

"That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are void for that they are in conflict with, contrary to and in derogation of the First Amendment to the Constitution of the United States, said amendment being as follows:

'Rights of Conscience; Freedom of the Press, etc. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances,' for that said laws of Georgia restrict and prohibit the free exercise of petitioner's rights of conscience to express his opinion as to who shall be elected to the Congress and to the Presidency of the United States; that the exercise of the right to vote is the most sacred and important petition to the government for a redress of grievances that could possibly exist; that grievances against the government arise through the people's representatives who are in point of fact the government itself, and to be denied the right to cast a ballot in protest of the actions of our representatives of which we disapprove is to abridge and prohibit the free exercise of the right to petition the government for a redress of grievances; that to otherwise petition the government would be ineffectual should the representatives ignore the petition, [fol. 28] and the only effective way of petitioning the government for a redress of grievances is to privilege citizens to exercise that sacred right of conscience and speech through the process of that petition commonly known as the ballot; that under our present system of voting in Georgia, our representatives in Congress and the President of the United States are responsible to only eight per cent. of the people of Georgia, and a petition other than through the ballot box by the ninety-two per cent who are disfranchised by reason of said poll tax provision in our Constitution and laws is as ineffectual as the April breezes on the Rock of Gibraltar; that said Georgia laws make no provision for exempting paupers unable to pay said tax; that because petitioner is unable to pay the same and for other reasons herein cited, he is denied 'due process of law' guar-

anteed under the Fourteenth Amendment to the Constitution of the United States."

6. Petitioner amends his original petition by adding as Paragraph 41 the following:

"'That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are in conflict with, contrary to and in derogation of Article VII, Section 2, Paragraph 1 of the Constitution of Georgia, as amended, which reads:

'All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. The General Assembly may, however, impose a tax upon such domestic animals as from their nature and habits are destructive of other property,' for that said poll tax provisions of our laws grant special privileges to women which are denied to men and exempt persons above the age of sixty from the payment of said tax, while at the same time they [fol. 29] require the payment of said taxes by persons between the ages of twenty-one and sixty years of age; and for the further reason that the foregoing section in declaring that all taxation shall be on an ad valorem basis expressly inhibits a capitation or head tax such as is sought to be imposed by Article II, Section 1, Paragraph 3 of the Constitution of Georgia and said laws enacted in pursuance thereof."

Wherefore, petitioner prays that this his amendment be allowed and ordered filed, and that the same be made a part of his original petition as by law provided in such cases.

J. Ira Harrelson, Attorney for Petitioner.

Duly sworn to by Nolen R. Breedlove. Jurat omitted in printing.

Order of the Court

The foregoing amendment considered, allowed, and ordered filed.

This the 14th day of April, 1936.

Hugh M. Dorsey, Judge Superior Court, Atlanta Circuit.

[fol. 30] [File endorsement omitted.]

[fol. 31] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO PETITION—Filed May 6, 1936

Now comes petitioner in the above captioned case, and by leave of the Court first had, amends his original petition in the following manner:

1. Petitioner amends Paragraph 26 of his original petition by adding immediately preceding the word "exempting" in line three of said paragraph the word "arbitrarily," and by striking the word "discriminatory" in the sixth line of said paragraph and inserting in lieu thereof the word "an arbitrary and unreasonable discrimination," so that said paragraph, as amended, will read as follows:

"That section 92-108 of the Code of Georgia, enacted in pursuance of said poll tax provisions in the Constitution of this State, arbitrarily exempting persons above the age of sixty from the payment of said tax and granting special privileges to the female inhabitants not enjoyed by the male residents between the ages of twenty-one and sixty is *an* arbitrary and unreasonable and denies to petitioner the equal protection of the laws within the jurisdiction of this State guaranteed by the Constitution of the United States."

2. Petitioner amends Paragraph 34 of his original petition by striking sub-paragraph (h) therefrom and inserting in lieu thereof the following:

"They grant special privileges to female inhabitants of this State with respect to said taxes which are arbitrarily and unreasonably denied to petitioner."

3. Petitioner further amends Paragraph 34 of his origi-[fol. 32] nal petition by striking sub-paragraph (j) therefrom and inserting in lieu thereof the following:

"They arbitrarily and unreasonably discriminate against petitioner for that they exempt persons above the age of sixty and require the payment of said tax by petitioner and other persons similarly situated."

4. Petitioner amends Paragraph 41 of his petition, as amended, by inserting immediately following the word "laws" the word "arbitrarily" and inserting in the seventeenth line of said paragraph immediately preceding the word "exempt" the word "arbitrarily," so that said paragraph as amended will read as follows:

"Petitioner amends his original petition by adding as Paragraph 41 the following:

'That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are in conflict with, contrary to and in derogation of Article VII, Section 2, Paragraph 1 of the Constitution of Georgia, as amended, which reads:

'All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. That the General Assembly may however impose a tax upon such domestic animals as from their nature and habits are destructive of other property,' for that said poll tax provision of our laws arbitrarily grant special privileges to women which are denied to men and arbitrarily exempt persons above the age of sixty from the payment of said tax, while at the same time they arbitrarily require the payment of said taxes by persons between the ages of twenty-one and sixty years of age; that for the further reason that the foregoing section in declaring that all taxation shall be on an [fol. 33] ad valorem basis expressly inhibits a capitation or head tax such as is sought to be imposed by Article II, Section 1, Paragraph 3 of the Constitution of Georgia and said laws enacted in pursuance thereof.' "

5. Petitioner further amends his original petition by adding as Paragraph 42 the following:

"That Sections 34-103 and 92-108 are in conflict with and in derogation of Article II, Section 1, Paragraph 3 of the Constitution of Georgia as amended, which reads in part, 'To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeable to law. . . .,' and said sections are in conflict with

Sections 34-113 and 34-114 which requires all voters to pay said poll tax as a prerequisite to the right to vote, for that said Sections 34-103 and 92-108 arbitrarily grant special privileges to women which are denied to men, and arbitrarily exempt persons above the age of sixty from payment of said tax while requiring petitioner and other persons between the ages of twenty-one and sixty to pay said tax before they can register to vote in the election enumerated in Paragraph 3 of plaintiff's original petition.

Wherefore, petitioner prays that this his amendment be allowed and ordered filed, and that the same be made a part of his original petition as by law provided in such cases.

J. Ira Harrelson, Attorney for Petitioner.

[fols. 34-35] Order of the Court

The foregoing amendment read, considered, allowed and ordered filed. Subj. to dem. & obj.

This 22nd day of April, 1936.

Hugh M. Dorsey, Judge Superior Court, Atlanta Circuit.

[File endorsement omitted.]

In Superior Court of Fulton County

Order Dismissing Case

General Motion to dismiss the foregoing petition is sustained and case hereby dismissed.

This May 6th, 1936.

Hugh M. Dorsey, Judge S. C. A. C.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 36] In Superior Court of Fulton County

[Title omitted]

Bill of Exceptions—Filed May 20, 1936

Be it Remembered that on April 23, 1936, the above captioned case came on for a hearing before the Honorable

Hugh M. Dorsey, Judge of the Motion Division of Fulton Superior Court, Atlanta Circuit, and after announcement of all parties as being ready for argument upon the points of law involved in said case, counsel for defendant made an oral motion to dismiss plaintiff's petition as amended upon the general ground that the same set forth no cause of action, which said motion was argued, and at the conclusion of the arguments on the following day the Court took the case under further consideration and on May 6th, 1936, entered up an order sustaining defendant's oral motion and dismissing the petition.

The plaintiff in error specifies as material to the errors hereinafter complained of the following portions of the records:

(a) Copy of plaintiff's original petition for mandamus filed in the office of the clerk of Fulton Superior Court on March 20th, 1936, together with process thereon and order of mandamus nisi signed on March 19th, 1936, by the Honorable John D. Humphries, one of the Judges of said Court; also entry of service of said petition upon defendant entered upon the back of said process by S. C. Wooten, Deputy Sheriff, on March 20th, 1936, said original petition being [fol. 37] numbered as 110888.

(b) Copy of plaintiff's amendment to his original petition filed in the office of the clerk of Fulton superior court on the 15th day of April, 1936, together with the Order of the Court thereon allowing and ordering the same filed.

(c) Copy of plaintiff's amendment to his original petition filed in the office of the Clerk of Fulton Superior Court on the 6th day of May, 1936, together with the Order of the Court thereon allowing and ordering the same filed.

(d) Copy of the Order of the Honorable Hugh M. Dorsey dated May 6th, 1936, sustaining the oral motion of counsel for defendant and dismissing plaintiff's petition.

To the Order and Judgment of the Court on May 6th, 1936, sustaining the oral motion of counsel for the defendant and dismissing said petition, plaintiff in error then excepted, now excepts and assigns the same as error upon the ground that said petition as amended sets forth a legal cause of action.

And now comes plaintiff in error, within the time provided by law, and assigning error on the ruling of the Court

sustaining the oral motion of counsel for the defendant and dismissing said petition as being contrary to law for the reason that said petition sets forth a legal cause of action, tenders this his bill of exceptions and prays that the same may be certified to and transmitted to the Supreme Court of Georgia in order that the alleged errors may be considered and corrected,—all as provided by law.

J. Ira Harrelson, Attorney for Plaintiff in Error, 1517 22 Marietta St. Bldg., Atlanta, Georgia.

[fol. 38] JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS

I do certify that the foregoing Bill of Exceptions is true, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Court of Fulton Superior Court is hereby ordered to make out a complete copy of such parts of the record in said case as are specified in this Bill of Exceptions, and certify the same as such, and cause the same to be transmitted to the next term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This the 20th day of May, 1936.

Hugh M. Dorsey, Judge Fulton Superior Court, Atlanta Circuit.

ACKNOWLEDGMENT OF SERVICE

Due and legal service of the within and foregoing Bill of Exceptions acknowledged; copy received and all other or further notice or service waived.

This the 21st day of May, 1936.

Carter, Carter & Johnson, Attorneys for Defendant in Error, 744 Citizens and Southern Bank Bldg., Atlanta, Georgia.

[fol. 39] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

PAUPER AFFIDAVIT ON BILL OF EXCEPTIONS TO SUPREME COURT OF GEORGIA

Personally appeared before the undersigned, Nolen R. Breedlove, plaintiff in error in the Bill of Exceptions filed in the above stated case, and after being duly sworn, on oath, deposes and says that he is, because of his poverty, unable to pay the costs in said case or to give security therefor.

Nolen R. Breedlove.

Sworn to and subscribed before me this the 20 day of May, 1936. C. M. Paschal, Notary Public, Fulton Co., Ga. (Notary Seal.)

[File endorsement omitted.]

[fol. 40] Clerk's certificate to foregoing paper omitted in printing.

[fol. 41] IN SUPREME COURT OF GEORGIA

JUDGMENT—October 14, 1936

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered: N. R. Breedlove v. T. E. Suttles, tax collector.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Atkinson, J., absent on account of illness.

[fol. 42] IN SUPREME COURT OF GEORGIA

No. 11456

BREEDLOVE

v.

SUTTLES, Tax Collector

OPINION—October 14, 1936

By the COURT:

The Court properly sustained the motion to dismiss the petition in this case.

Nolen R. Breedlove, alleging himself to be twenty-eight years of age and to have resided in Fulton County continuously for more than seven years, filed his petition for mandamus against T. E. Suttles, tax-collector of Fulton County, to require said officer to allow petitioner to register for elections without the payment of poll-taxes and without exacting of him the oath prescribed by statute, containing the provision "that I have paid all poll-taxes which I have had an opportunity of paying agreeably to law." The petitioner contends that Article 2, section 1, paragraph 3, of the constitution of Georgia, as amended (Code, § 2-603), and all statutes enacted in pursuance thereof, to wit, Code §§ 34-103, 34-113, 34-114, 92-108, requiring the payment of the poll-tax as a prerequisite to the right to register and vote for candidates seeking the offices of President and members of Congress, are contrary to and in derogation of the preamble and the following provisions of the constitution of the United States: Article 4, section 4, guaranteeing to every State a republican form of government; article 1, section 8, paragraph 1, as to uniform tax; article 1, section 9, paragraph 4, which prohibits the laying of capitation or other direct tax in proportion to the census or enumeration; article 4, section 2, paragraph 1, declaring that the citi- [fol. 43] zens of each State shall be entitled to all privileges and immunities of the citizens in the several States; article 6, section 2, declaring the Federal constitution to be the supreme law of the land; article 14, section 1, prohibiting States making or enforcing laws abridging the privileges and immunities of citizens of the United States; article 15,

section 1, guaranteeing the right of citizens without regard to race, color, or previous condition of servitude; article 19, section 1, prohibiting any laws denying or abridging the right of citizens to vote on account of sex; the first amendment, relating to the rights of conscience and the right to petition the government for a redress of grievances; the fourteenth amendment, as to the due process of law; the fifteenth amendment, that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

And the foregoing statutes in regard to registration and the payment of poll-taxes are attacked as contrary to and in violation of the uniform-tax requirement prescribed by our State constitution, that all taxes shall be ad valorem; and it is alleged that these statutes are contrary to the first amendment to the constitution of the United States as to "rights of conscience, freedom of the press," etc., and contrary to that section of our State constitution which recognizes the constitution of the United States as the supreme law of the land; that article 2, section 1, paragraph 3, of the constitution of Georgia, as amended, is in conflict with other provisions of our State constitution, to wit, article 12, section 1, and article 7, section 2, paragraph 1; that said paragraph of the State constitution, and the laws enacted thereunder, are in violation of the due-process clause of the fourteenth amendment to the U. S. constitution and the clause [fol. 44] in said amendment which defines the word "liberty." An oral motion to dismiss the petition was sustained, and the plaintiff excepted.

Beck, Presiding Justice: The questions involved in this case by the objections raised as to the constitutionality of certain provisions of our law have been discussed by able text-writers and in many judicial opinions rendered by the courts of this country. In one part of his work on Constitutional Limitations, 1358-1370, the eminent writer, Justice Cooley, says:

"We have said, that, though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulation of elections, including the prescribing of qualifications for suffrage, is left by the national constitution to the several States, except as it is provided by that instrument that

the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The fifteenth amendment, it will be seen, does not forbid denying the franchise [fol. 45] to citizens except upon certain specified grounds, and it is matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent. Minors, who equally with adult persons are citizens, are still excluded [as were also women before the adoption of the nineteenth amendment]; and sometimes persons who have been convicted of infamous crimes [are excluded] * * * In some States laws will be found in existence which, either generally or in particular cases, deny the right to vote to those persons who lack a specified property qualification, or who do not pay taxes. In some States idiots and lunatics are also expressly excluded; and it has been supposed that these unfortunate classes, by the common political law of England and of this country, were excluded with women, minors, and aliens from exercising the right of suffrage, even though not prohibited therefrom by any express constitutional or statutory provision. Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature, or otherwise than by an amendment of the constitution. One of the most common requirements is, that the party offering to vote shall reside within the district which is to be affected by the exercise of the right. If a State officer is to be chosen, the voter should be a resident of the State; and if a county, city or township officer, he should reside within such county, city, or township. This is the general rule; and for the more convenient determination of the right to vote, and to prevent fraud, it is now generally required that the elector shall only exercise within the municipality where he has his residence his

right to participate in either local or general elections. Requiring him to vote among his neighbors, by whom he will likely be known, the opportunities for illegal or fraudulent [fol. 46] voting will be less than if the voting were allowed to take place at a distance and among strangers. And wherever this is the requirement of the constitution, any statute permitting voters to deposit their ballots elsewhere must necessarily be void. * * *

"While it is true that the legislature cannot add to the constitutional qualifications of electors, it must nevertheless devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein. For this purpose the times of holding elections, the manner of conducting them and of ascertaining the result, are prescribed, and heavy penalties are imposed upon those who shall vote illegally, or instigate others to do so, or who shall attempt to preclude a fair election or to falsify the result. The propriety, and indeed the necessity, of such regulations are undisputed. In some of the States it has also been regarded as important that lists of voters should be prepared before the day of election, in which should be registered the name of every person qualified to vote. Under such a regulation, the officers whose duty it is to administer the election laws are enabled to proceed with more deliberation in the discharge of their duties, and to avoid the haste and confusion that must attend the determination on election day of the various and sometimes difficult questions concerning the right of individuals to exercise this important franchise. Electors, also, by means of this registry, are notified in advance what persons claim the right to vote, and are enabled to make the necessary examination to determine whether the claim is well founded, and to exercise the right of challenge if satisfied any person registered is unqualified. When the con- [fol. 47] stitution has established no such rule, and is entirely silent on the subject, it has sometimes been claimed that the statute requiring voters to be registered before the day of election, and excluding from the right all whose names do not appear upon the list, was unconstitutional and void, as adding another test to the qualifications of electors which the constitution has prescribed, and as having the effect, where electors are not registered, to exclude

from voting persons who have an absolute right to that franchise by the fundamental law. This position, however, has not been generally accepted as sound by the courts. The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the legislature, unless forbidden. Many resting upon the same principles are always prescribed, and have never been supposed to be open to objection. Although the constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls, and there deposit their ballots, and not elsewhere, was a violation of the Constitution, because prescribing an additional qualification, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential. And where the law requires such a registry, and forbids the reception of votes from any per- [fol. 48] sons not registered, an election in a township where no such registry has ever been made will be void, and cannot be sustained by making proof that none in fact but duly qualified electors have voted. It is no answer that such a rule may enable the registry officers, by neglecting their duty, to disfranchise the electors altogether; the remedy of the electors is by proceedings to compel the performance of the duty; and the statute, being imperative and mandatory, cannot be disregarded. The danger, however, of any such misconduct on the part of officers is comparatively small, when the duty is entrusted to those who are chosen in the locality where the registry is to be made, and who are consequently immediately responsible to those who are interested in being registered.

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void."

And the same text-writer, in his work on Taxation (4th ed.) vol. 4, pp. 3497-3507, says: "A capitation or poll-tax is a tax on the poll without reference to property, business or other circumstances. It is imposed numerically upon citizens without reference to their capacity to sustain the burden. A poll or capitation tax is not a tax upon property but is a tax against the person. However, a poll-tax, although not a tax on property, is nevertheless a tax within constitutional and statutory provisions in relation to taxes. * * * Capitation or poll-taxes are generally regarded as a proper means for raising revenue for public purposes. The legislature of a State ordinarily has power to impose a poll-tax, in the absence of direct constitutional [fol. 49] prohibition or limitation, and constitutional objections have for the most part been overruled and the imposition of the tax held constitutional. In some States the constitution itself expressly authorizes or levies a poll-tax; but constitutional provisions relating to capitation taxes are generally not self-executing. * * * It is generally held that the requirement in a State constitution that taxes shall be equal and uniform does not apply to poll-taxes. * * * A poll-tax on males does not violate the constitutional provision because of discrimination on account of sex. * * * It is within the power of the legislature to make the payment of poll-taxes a condition precedent to the right to vote.

We have made the above lengthy quotations from Mr. Cooley's works on "Constitutional Limitations" and "Taxation" because in a brief way the principles laid down by the text-writer and the cases cited in the lengthy annotations thereto cover the substantial questions in this record. In addition, see also the following authorities: "Frieszleben v. Shallcross, 9 Houst. (Del.) 1 (19 Atl. 576, 8 L. R. A. 337); Short v. Maryland, 80 Md. 392 (31 Atl. 322, 29 L. R. A. 404); Hawkins v. Hawkins, 350 Ill. 227 (183 N. E. 9); United States v. Reese, 92 U. S. 214 (23 L. ed. 563); Thurston County v. Tenino Stone Quarries, 44 Wash. 351 (87 Pac. 634, 12 Ann. Cas. 314); Peacock v. Pratt, 121 Fed. 772, 775; LaBelle Iron Works v. U. S., 256 U. S. 377 (41 Sup. Ct. 528, 65 L. ed. 998); Pohl v. Chicago &c. R. Co., 52 Mont. 572 (160 Pac. 515); Olander v. Hollowell, 193 Iowa, 979 (188 N. W. 667); State ex rel. Atty.-gen. v. Dillon, 32 Fal. 545 (14 So. 383, 22 L. R. A. 124, 20 C. J. 76, § 37); McMahon v. Savannah, 66

Ga. 217 (42 Am. R. 65). It follows from what is said above that the court did not err in sustaining the motion to dis-
[fol. 50] miss the petition in this case.

Judgment affirmed. All the Justices concur, except Atkinson, J., absent because of illness.

[fol. 51] IN SUPREME COURT OF GEORGIA

[Title omitted]

PETITION FOR APPEAL—Filed January 13, 1937

To the Chief Justice of the Supreme Court of the State of Georgia:

Your petitioner, Nolen R. Breedlove, respectfully shows: That he is the plaintiff in error in the above stated cause.

That the said case originated through mandamus proceedings instituted by Nolen R. Breedlove against T. Earl Suttles, as Tax Collector of Fulton County, Georgia, to require that the said Tax Collector register the said Breedlove to vote for the electors of the President and Vice-President of the United States and the Members of the Congress in the general elections without requiring him to pay poll taxes imposed under Article II, Section 1, Paragraph 3 of the Constitution of the State of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof. The said suit attacked the validity of the said constitutional provision and said laws enacted in pursuance thereof as violative of the Preamble to the Constitution of the United States; Article I, Section 8, Paragraph 1 of said Constitution; Article I, Section 9, Paragraph 4 of said Constitution, Article IV, [fol. 52] Section 2 of said Constitution; Article VI, Section 2 of said Constitution; Article XIV, Section 1 of said Constitution; Article XV, Section 1 of said Constitution; Article XIX, Section 1 of said Constitution; Article IV, Section 4 of said Constitution, all of which more fully appears in the original petition in said case.

The tax collector took no issue on any matter connected with said suit except only that he denied the unconstitutionality of said State constitutional provision and said laws enacted in pursuance thereof.

Thus under the pleadings in the case the sole issue on which the same was to be determined, and was determined, was whether the said constitutional provision and said laws enacted in pursuance thereof were unconstitutional in said respects.

Upon the hearing of the cause in Fulton Superior Court, an oral motion to dismiss the petition having been made and granted, an order and judgment dismissing the petition of plaintiff was entered. That Court entered no formal opinion orally or in writing in its order of dismissal.

Thereupon plaintiff in error appealed said case to the Supreme Court of Georgia by bill of exceptions and writ of error pursuant to the Georgia practice in such cases.

On the 14th day of October, 1936, the Supreme Court of the State of Georgia rendered a judgment affirming the judgment of Fulton Superior Court, which judgment is of file in this cause.

The judgment of the Supreme Court of the State of Georgia is that of the highest court of said State in which a decision in this case may be had.

[fol. 53] In the manner aforesaid there was in said cause drawn in question the validity of a constitutional provision of the State of Georgia and certain statutes enacted in pursuance thereof on the ground that they were repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Georgia is in favor of the validity of said constitutional provision and said statutes enacted in pursuance thereof, notwithstanding your petitioner's contention that they violate the provisions of the Constitution of the United States as above set out.

Therefore, in accordance with 237 (a) of the Judicial Code (the same being set out as U. S. C. A., 28, Par. 344), and in accordance with the rules of the Supreme Court of the United States, the case is one which under the legislation in force when the Act of Congress of January 31, 1928, was passed, a review could be had in the Supreme Court of the United States on a writ of error as a matter of right. Therefore, under the aforesaid Act of January 31, 1928, a review may be had as a matter of right by appeal.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of error filed herewith pursuant to the rules of the Supreme Court of the United States, and there is likewise

filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by said rules.

The judgment of the Supreme Court of the State of Georgia now sought to be reviewed was a final judgment for that under the said judgment and the opinion of the court, in the light of the proceedings had in said case, the said judgment leaves nothing for the trial court to do except the ministerial act of entering final judgment pur- [fol. 54] suant to the judgment and decision of the Supreme Court of the State of Georgia.

Wherefore, petitioner prays that this his petition for the allowance of an appeal from the Supreme Court of the State of Georgia, the highest court of said State in which a decision in this cause may be had, be allowed and transmitted to the Supreme Court of the United States, in order that the decision and final judgment of the Supreme Court of the State of Georgia may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Georgia, under her hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of petitioner and that the bond tendered by petitioner be approved.

This the 12 day of January, 1937.

J. Ira Harrelson, Arthur Garfield Hays, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 55] IN SUPREME COURT OF GEORGIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1937

The above named, Nolen R. Breedlove, who is the appellant herein to the Supreme Court of the United States and herein referred to as appellant, concurrently with the filing of his petition for appeal files these assignments of error and says that the judgment of the Supreme Court of the State of Georgia in this case rendered on the 14th day of

October, 1936, is erroneous and injurious to the appellant in the following respects:

1

The Supreme Court of Georgia erred in affirming the judgment of Fulton Superior Court and declaring Artiele II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia enacted in pursuance thereof to be valid and constitutional by its order dismissing the petition on oral motion of counsel for defendant in error in the trial court.

2

The Supreme Court of Georgia erred in failing to render judgment in favor of said appellant.

3

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution [fol. 56] of Georgia, as amended, and said laws enacted in pursuance thereof, deprive appellant of his liberty without due process of law in violation of Article XIV, Section 1 of the Constitution of the United States.

4

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, deny to appellant the equal protection of the laws in violation of Article XIV, Section 1 of the Constitution of the United States.

5

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, deny to appellant the privileges and immunities of a citizen of the United States as guaranteed by Article XIV, Section 1 of the Constitution of the United States.

6

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution

of Georgia, as amended, and said laws enacted in pursuance thereof, deny to appellant the enjoyment of the privileges of a republican form of Government in violation of Article IV, Section 4 of the Constitution of the United States.

7

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, arbitrarily and unreasonably discriminate against appellant in so far as they grant special privileges to women [fol. 57] which are denied to appellant and other male citizens similarly situated in violation of Article XIX, Section 1 of the Constitution of the United States which says that the right to vote shall not be denied or abridged on account of sex.

Wherefore, appellant prays that the judgment complained of be set aside and reversed and that said laws of Georgia be declared to be in violation of and repugnant to each and all of the foregoing provisions of the Constitution of the United States in so far as they operate as a prerequisite to the right of citizens to vote for the electors for the President and Vice-President of the United States and Senators and Representatives in Congress, and for such further relief as to this Court may seem proper.

J. Ira Harrelson, Arthur Garfield Hays, Counsel for Appellant.

[File endorsement omitted.]

[fol. 58] IN SUPREME COURT OF GEORGIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 13, 1937

The petition of Nolen R. Breedlove, plaintiff in error in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Georgia, having been filed with the clerk of this Court and presented herein, accompanied by the assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of

the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment, which said judgment is described in the petition for the allowance of an appeal, of the Supreme Court of the State of Georgia, as prayed in said petition, and that the clerk of the Supreme Court of the State of Georgia shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under her hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

[fol. 59] It is further Ordered that the said appellant shall give a good and sufficient bond, in the sum of Two Hundred ($200.00) Dollars, that said appellant shall prosecute said appeal to effect and answer all costs if they fail to make their plea good, and that said bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause until the final disposition of this cause by the Supreme Court of the United States.

This the 13th day of January, 1937.

Richard B. Russell, Chief Justice of the Supreme Court of the State of Georgia.

[File endorsement omitted.]

[fol. 60] Citation, in usual form, showing service on T. Earle Suttles, filed January 13, 1937, omitted in printing.

[fols. 61-78] Bond on appeal for $200.00, approved and filed January 13, 1937, omitted in printing.

[fol. 79] IN SUPREME COURT OF GEORGIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 13, 1937

To the Clerk of the Supreme Court of the State of Georgia:

The above named plaintiff in error as appellant in the appeal in this case files this præcipe to indicate to you the portions of the record to be incorporated in the transcript

on appeal. You will make the transcript of the record and transmit the same to the Supreme Court of the United States under your hand and the seal of the Supreme Court of the State of Georgia, duly certifying the same and incorporating therein the following portions of the record:

1. The original petition filed by the plaintiff in Fulton Superior Court;

2. The amendment to the original petition filed by the plaintiff on the 15th day of April, 1936, and the order allowing the same;

3. The amendment to the original petition filed by the plaintiff on the 6th day of May, 1936, and the order allowing the same;

4. The order and judgment of Fulton Superior Court by the Honorable Hugh M. Dorsey, Judge, rendered on the 6th day of May, 1936, dismissing plaintiff's petition as amended;

5. The bill of exceptions with pauper's affidavit attached thereto and the order certifying and approving the same; [fol. 80] 6. The judgment of the Supreme Court of the State of Georgia on the 14th day of October, 1936, affirming the judgment of Fulton Superior Court;

7. The opinion of the Supreme Court of the State of Georgia;

8. The petition for the allowance of an appeal to the Supreme Court of the United States;

9. The order allowing the same;

10. The citation and the acknowledgment of service thereon;

11. The assignments of error on appeal to the Supreme Court of the United States;

12. The bond on appeal to the Supreme Court of the United States;

13. The statement as to the jurisdiction of the Supreme Court of the United States;

14. The acknowledgment of service of the petition for appeal, order allowing the same, assignments of error and statement as to jurisdiction including therein the notice with respect thereto;

15. This præcipe with the acknowledgment of service thereon.

This the 12 day of January, 1937.

J. Ira Harrelson, Arthur Garfield Hays, Counsel for Appellant.

Due and legal service of the foregoing præcipe is hereby acknowledged this the 13 day of January, 1937.

T. Earl Suttles, Appellee, Fulton County Court House, Atlanta, Ga.

[fols. 81-86] [File endorsement omitted.]

[fol. 87] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 88] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF POINTS TO BE RELIED ON AND THE PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF—Filed March 15, 1937

Appellant intends to rely upon the following points:

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional a tax imposing penalties of $13.50 upon appellant, which he is unable to pay, and upon others similarly situated, as a prerequisite to voting for electors of the President and the Vice President of the United States and the Senators and Representatives in Congress, from the payment of which persons above sixty are arbitrarily exempt and from the payment of which female inhabitants are arbitrarily exempt until they register to vote, whereas the assessment runs against appellant and others similarly situated from year to year whether they register or not, said exemptions and discriminations being arbitrary, capricious and unreasonable, having no relationship to the public health, morals or general welfare or any other matter within the so-called police power.

The effect of the sustained provisions of the Georgia constitution and statutes was to restrict the vote in the State of Georgia in the national elections of 1932 to eight per [fol. 89] cent of the population, while an average of thirty-nine per cent of the total population cast their ballots in the same elections in the thirty-nine States which do not require the payment of a poll tax as a condition of registering and voting. Thus, the appellant and others similarly

situated have been deprived of the enjoyment of the privilege of the elective franchise, inconsistently with those fundamental principles of liberty and justice which lie at the base of our civil and political institutions. The privilege of voting for federal officials is one to which the appellant is entitled, unhampered and unrestricted by a capitation or other direct tax arbitrarily imposed through hostile state invasions of his rights as a citizen of the United States. As such citizen he is entitled to participate in the choice of electors of the president and the vice-president of the United States and of senators and representatives in Congress and no State may exercise its taxing power so as to destroy this privilege. If the tax imposed by Georgia were increased to a high degree, as it can be, if valid, it might easily be used for the purpose of destroying the elective franchise altogether, by reducing the percentage of voters to far less than eight per cent of the population of the State. Whatever property and other economic restrictions on the franchise may have been upheld in earlier periods of our history, the admission today that a State has the power to prevent its poorer inhabitants from participating in the choice of federal officials would be totally contrary to the contemporary spirit of American institutions, and inconsistent with the purposes announced in the Preamble to the United States Constitution.

Moreover, the manner of levying and collecting the Georgia poll tax opens its purpose to suspicion, since it is not [fol. 90] collected through levy and pursuit as are taxes intended for revenue purposes, but, rather, through the process of restriction and prior restraint on the right to vote.

The said judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which arbitrarily, capriciously and unreasonably deny to appellant as a citizen of the United States residing in Georgia the equal protection of the laws guaranteed to all persons within the State's jurisdiction by the Fourteenth Amendment. Persons above sixty may register without paying any poll-tax, and female inhabitants may do so without paying the tax except for years in which they actually register, whereas the tax is assessed cumulatively against appellant, even as to the years in which he made no attempt to register. The classification is wholly unreasonable.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which arbitrarily, capriciously and unreasonably deprive appellant of liberty and property without due process of law in violation of the fourteenth amendment to the Constitution of the United States.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which arbitrarily, capriciously and unreasonably deny to appellant the privileges and immunities guaranteed to him by the fourteenth amendment to the Constitution of the United States.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which, as set forth in Paragraph 2 above, arbitrarily, capriciously and unreasonably abridge the right of appel- [fol. 91] lant to vote by reason of sex by requiring him to pay $13.50, whereas a woman similarly situated would be exempt from the payment thereof, in violation of Article XIX of the Constitution of the United States.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws which deprive appellant and the remaining citizens of the United States residing in Georgia, who are otherwise qualified but unable to pay the poll tax, of the right to vote, and which have established and maintained an oligarchic and autocratic rather than a republican form of government by reason of the facts recited above, and as otherwise set out in the mandamus petition, in derogation of Article IV, Section 4 of the Constitution of the United States, which guarantees to every state a republican form of government, the Supreme Court of the United States having construed said constitutional guarantee to be an inherent and inalienable right of the people of the United States as citizens thereof.

Appellant specifies the following parts of the record which he thinks necessary for the consideration of the aforesaid points:

(a). The original petition filed by the plaintiff in Fulton superior court;

(b). The amendment to the original petition filed by the plaintiff on the 15th day of April, 1936, and the order allowing the same;

(c). The amendment to the original petition filed by the plaintiff on the 6th day of May, 1936, and the order allowing the same;

(d). The order and judgment of Fulton superior court by the Honorable Hugh M. Dorsey, Judge, rendered on the 6th day of May, 1936, dismissing plaintiff's petition as [fol. 92] amended;

(e). The bill of exceptions with pauper's affidavit attached thereto and the order certifying and approving the same;

(f). The judgment of the Supreme Court of the State of Georgia on the 14th day of October, 1936, affirming the judgment of Fulton superior court;

(g). The opinion of the Supreme Court of the State of Georgia;

(h). The petition for the allowance of an appeal to the Supreme Court of the United States;

(i). The order allowing the same;

(j). The citation and acknowledgment of service thereon;

(k). The assignments of error on appeal to the Supreme Court of the United States;

(l). The bond on appeal;

(m). The statement as to jurisdiction of the Supreme Court of the United States;

(n). The acknowledgment of service of the petition for appeal, order allowing the same; assignments of error and statement as to jurisdiction including therein the notice with respect thereto;

(o). The præcipe with the acknowledgment of service thereon.

J. Ira Harrelson, Arthur Garfield Hays, Counsel for Appellant.

Due and legal service of the foregoing is hereby acknowledged, copy received and further service waived.

This the 13 day of January, 1937.

[fol. 93] T. Earl Suttles, Appellee, Address: Fulton County Court House, Atlanta, Ga.

[fol. 94] [File endorsement omitted.]

Endorsed on cover: File No. 41,317. Georgia Supreme Court. Term No. 777. Nolen R. Breedlove, appellant, vs. T. Earl Suttles, as Tax Collector. Filed March 4, 1937. Term No. 777, O. T., 1936.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Nature of case and rulings below	2
State statute the validity of which is involved	3
Cases believed to sustain jurisdiction	5
Exhibit "A"—Opinion of the Supreme Court of the State of Georgia	8

Table of Cases Cited.

American Express Co. v. *Michigan*, 177 U. S. 440	5
Breedlove v. *Suttles, etc.*, Southeastern Reporter (Advance Sheets) of December 10, 1936, pages 140-144	2
Colgate v. *Harvey*, 296 U. S. 404	5, 6
Hartman v. *Greenhow*, 102 U. S. 672	5
Louisville & Nashville R. R. v. *Melton*, 218 U. S. 36	5
Miller v. *Schoene*, 276 U. S. 272	5
Zucht v. *King*, 260 U. S. 174	5
Western Turf Ass'n v. *Greenberg*, 204 U. S. 359	5

Statutes Cited.

Act of the General Assembly of the State of Georgia, 1908, ratified October 7th, 1908, commencing on page 27	3
Act of the General Assembly of the State of Georgia ratified November 8, 1932, published in Georgia Laws, 1931, commencing on page 102	3
Act of Congress of February 13, 1925, Chapter 229, 43 Stat. 938	2
Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54	2
Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46	2
Constitution of the United States, Article IV, Section 4	5

Page

Constitution of the United States, 14th Amendment, Section 1 5
Constitution of the United States, 19th Amendment 5
Georgia Code of 1933, Section 34-103 (Acts 1894, pp. 116; Acts 1908, p. 58; Acts 1913, p. 115; Const., Art. II, Sec. 1, Par. II and Sec. 2-603) 4
Georgia Code of 1933, Section 34-113 (Acts 1908, pp. 58; Const. Art. II, Sec. 1, Par. II and Sec. 2-603) 4
Georgia Code of 1933, Section 34-114 (Acts 1894, pp. 115, 117; Const., Art. II, Sec. 1, Par. II and Sec. 2-603) 4
Georgia Code of 1933, Section 92-108 (Acts 1927, p. 57) 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 777

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, AS TAX COLLECTOR,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

APPELLANT'S STATEMENT DISCLOSING BASIS OF JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

This Court has jurisdiction of this appeal because it is a case wherein was drawn in question the validity of a provision of the Constitution of the State of Georgia and certain statutes of the Code of Georgia enacted in pursuance thereof as being repugnant to several provisions of the Constitution of the United States, and the decision was in favor of the validity of said State constitutional provision and said State statutes enacted in pursuance thereof.

The Act of Congress of February 13, 1925, Chapter 229, 43 Stat. 938, gives jurisdiction to this Court on writ of error to "a final judgment or decree in any suit in the highest court of a State in which a decision could be had where is drawn in question * * * the validity of a statute of any State on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be reviewed as a matter of right on writ of error.

The judgment of the Supreme Court of Georgia, sustaining the constitutionality of the Georgia Constitution and said laws enacted in pursuance thereof, was rendered on the 14th day of October, 1936, the same appearing in pages 140-144 of the Southeastern Reporter Advance Sheets of December 10, 1936, which as indicated therein will be reported in the bound volume of the Southeastern Reporter to be numbered 188. Said judgment was rendered by the highest court of the State of Georgia and is a final decision upon all of the constitutional issues involved in the case.

Suit was commenced in the Superior Court of Fulton County, Georgia, as a suit for mandamus brought by appellant to require the appellee to privilege appellant to register and require him to administer the customary oath with the payment of the poll tax provision omitted therefrom and without paying seven years poll tax of $1.00 for each year since he became twenty-one years of age, together with *fi. fa.* penalties and interest aggregating the sum of $13.50. The original petition plainly and distinctly sets out the attack on the constitutionality of the Georgia laws complained of in a clear and orderly manner. Hence the valid-

ity of the statutes and provision of our State Constitution were drawn in question by the original suit.

The Superior Court of Fulton County upheld the constitutionality of the State Constitution and the statutes enacted in pursuance thereof as not being repugnant to or in conflict with the Federal constitutional provisions cited therein and refused to make the *mandamus nisi* absolute, having dismissed said petition on oral motion of counsel for appellee, the defendant in the lower court. The judgment and ruling of the Superior Court of Fulton County by His Honor Hugh M. Dorsey is presented in the record.

The plaintiff in the lower court and the appellant herein carried the case by writ of error to the Supreme Court of Georgia, which, as stated, is the highest court in the State in which a decision could be had. That court has rendered a final judgment in sustaining the judgment of Fulton Superior Court in denying all relief sought in said mandamus proceeding and dismissing said petition, as amended, thereby denying to appellant the right to register and vote for the electors of the President and Vice President of the United States and the Members of the Congress without paying said $13.50 tax, which, by reason of poverty, as set forth in the mandamus proceeding, he was unable to pay.

The provision of the Constitution of the State of Georgia, the validity of which is involved, is the Act of the General Assembly of the State of Georgia of 1908, ratified October 7th, 1908, published in Georgia Laws, 1908, commencing on page 27, and the Act of the General Assembly of the State of Georgia, ratified November 8th, 1932, published in Georgia Laws, 1931, commencing on page 102. The particular part of the constitutional provision is that part which requires as a prerequisite to the right to register and vote the payment of all poll taxes, to wit:

> "To entitle a person to register and vote at any election by the people, he shall have resided in the

> State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. * * *"

which said constitutional amendment was proposed by the Acts of 1931, ratified November 8th, 1932, the original constitutional provision relating thereto having required the payment of all taxes of every nature whatsoever as a prerequisite to voting.

The particular parts of the Georgia statutes involved are codified as Code Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia of 1933, and being as follows:

> 34-103. "I do swear, or affirm, that * * * I have paid all poll taxes which I have had an opportunity of paying agreeably to law; * * *." (Acts 1894, pp. 116; Acts 1908, pp. 58; Acts 1913, pp. 115; Const., Art. II, Sec. 1, Par. II and Sec. 2-603.)
>
> 34-113. "No one shall be allowed to register for a general election unless he shall have paid all poll taxes due by him at least six months before the date of the election." (Acts 1908, pp. 58; Const., Art. II, Sec. 1, Par. II, and Sec. 2-603.)
>
> 34-114. "No tax collector shall allow any person to sign his name in the voters' book unless he is satisfied at the time that the poll taxes due by said voter are paid and that he is otherwise qualified." (Acts 1894, pp. 115, 117; Const., Art. II, Sec. 1, Par. II and Sec. 2-603.)
>
> 92-108. "There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property taxation, a poll tax of $1.00, * * *: Provided, that this tax shall not be demanded of * * * or female inhabitants of the State who do not register for voting." (Acts 1927, pp. 57.)

By reference to paragraph fourteen of appellant's original mandamus petition, as amended, it will be seen that the

validity of the foregoing Georgia laws was drawn in question as being repugnant to Article XIV, Section 1 of the Federal Constitution which says that "No State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person the equal protection of the laws."

Also, in paragraph sixteen of said mandamus petition, as amended, the validity of said laws are drawn in question as being repugnant to the Nineteenth Amendment to the Federal Constitution which says: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

In paragraph thirty-six of appellant's mandamus petition, as amended, the validity of said Georgia laws is drawn in question as being repugnant to Article IV, Section 4 of the Constitution of the United States, which provides that "The United States shall guarantee to every State in this Union a republican form of government."

Appellant cites the following decisions of the Supreme Court of the United States as indicating that that tribunal has jurisdiction to review the judgment of the Supreme Court of the State of Georgia upon the validity of the State constitutional provision and said laws enacted in pursuance thereof, which validity was drawn in question in the original mandamus suit and passed upon by the highest court of our State: *Colgate* v. *Harvey*, 296 U. S. 404; *Miller* v. *Schoene*, 276 U. S. 272, 48 S. Ct. 410; *Western Turf Ass'n* v. *Greenberg*, 204 U. S. 359; *American Express Co.* v. *Michigan*, 177 U. S. 440; *Hartman* v. *Greenhow*, 102 U. S. 672.

The constitutional questions raised are serious and not frivolous. *Zucht* v. *King*, 260 U. S. 174, 176; *Louisville & Nashville R. R.* v. *Melton*, 218 U. S. 36, 49.

The Supreme Court has never considered the constitutionality of a State poll tax. Prior decisions upholding various qualifications imposed by States on their voters have sustained statutes which were less objectionable in character, in that they did not seek to limit the franchise by discriminating against impecunious members of the community. The privilege of a citizen of the United States to vote for Federal officials is one which the United States Constitution prohibits any State from abridging by means of imposing a heavy economic burden. The right to vote for such officials is, under Twentieth Century conditions, one which inheres in the appellant by reason of his United States citizenship.

The Supreme Court has recently expanded the application of the privileges and immunities clause of the Fourteenth Amendment. *Colgate* v. *Harvey*, 296 U. S. 404.

It therefore becomes appropriate for the Court to reconsider earlier decisions holding that the right of suffrage is solely a matter of State concern. Political inequality based upon economic inequality is contrary to the basic postulates of the American democratic system.

The Georgia laws which we contend to be repugnant to the several provisions of the Constitution of the United States set out herein, and as shown in the original mandamus petition, have arbitrarily restricted the vote in Georgia to eight per cent of the population, while thirty-nine per cent of the population votes on an average in States which do not require the payment of a poll tax as a prerequisite to the right to register and vote for the electors of the President and Vice President of the United States and the Members of the Congress. These and other arbitrary, unreasonable and capricious restrictions and discriminations, as more fully set out in our statement of points to be relied on, raise very serious, substantial and undetermined Federal

questions which materially affect appellant and millions of others similarly situated politically, economically, educationally and otherwise in the enjoyment of their inherent right of freedom and the pursuit of happiness as American citizens.

Respectfully submitted,

J. Ira Harrelson,
Arthur Garfield Hays,
Counsel for Appellant.

APPENDIX "A".

SUPREME COURT OF GEORGIA.

No. 11456.

BREEDLOVE

v.

SUTTLES, Tax-Collector.

(Decided October 14, 1936.)

By the COURT:

The court properly sustained the motion to dismiss the petition in this case.

Nolen R. Breedlove, alleging himself to be twenty-eight years of age and to have resided in Fulton County continuously for more than seven years, filed his petition for mandamus against T. E. Suttles, tax collector of Fulton County, to require said officer to allow petitioner to register for elections without the payment of poll taxes and without exacting of him the oath prescribed by statute, containing the provision "that I have paid all poll taxes which I have had an opportunity of paying agreeably to law." The petitioner contends that Article 2, section 1, paragraph 3, of the Constitution of Georgia, as amended (Code, § 2-603), and all statutes enacted in pursuance thereof, to wit, Code, §§ 34-103, 34-113, 34-114, 92-108, requiring the payment of the poll tax as a prerequisite to the right to register and vote for candidates seeking the offices of President and Members of Congress, are contrary to and in derogation of the preamble and the following provisions of the Constitution of the United States, Article 4, section 4, guaranteeing to every State a republican form of government; Article 1, section 8, paragraph 1, as to uniform tax; article 1, section 9, paragraph 4, which prohibits the laying of capitation or other direct tax in proportion to the census or enumeration; article 4, section 2, paragraph 1, declaring that the citizens of each State shall be entitled to all privileges and immunities of the citizens in the several States; article 6, section 2,

declaring the Federal Constitution to be the supreme law of the land; article 14, section 1, prohibiting States making or enforcing laws abridging the privileges and immunities of citizens of the United States; article 15, section 1, guaranteeing the right of citizens without regard to race, color, or previous condition of servitude; article 19, section 1, prohibiting any laws denying or abridging the right of citizens to vote on account of sex; the first amendment, relating to the rights of conscience and the right to petition the government for a redress of grievances; the fourteenth amendment, as to the due process of law; the fifteenth amendment, that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

And the foregoing statutes in regard to registration and the payment of poll taxes are attacked as contrary to and in violation of the uniform-tax requirement prescribed by our State constitution, that all taxes shall be ad valorem; and it is alleged that these statutes are contrary to the first amendment to the Constitution of the United States as to "rights of conscience, freedom of the press," etc., and contrary to that section of our State constitution which recognizes the Constitution of the United States as the supreme law of the land; that article 2, section 1, paragraph 3, of the constitution of Georgia, as amended, is in conflict with other provisions of our State constitution, to wit, article 12, section 1, and article 7, section 2, paragraph 1; that said paragraph of the State constitution, and the laws enacted thereunder, are in violation of the due-process clause of the fourteenth amendment to the U. S. constitution and the clause in said amendment which defines the word "liberty". An oral motion to dismiss the petition was sustained, and the plaintiff excepted.

BECK, Presiding Justice:

The questions involved in this case by the objections raised as to the constitutionality of certain provisions of our law have been discussed by able text-writers and in many judicial opinions rendered by the courts of this coun-

try. In one part of his work on Constitutional Limitations, 1358-1370, the eminent writer, Justice Cooley, says:

> "We have said, that, though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulation of elections, including the prescribing of qualifications for suffrage, is left by the national constitution to the several States, except as it is provided by that instrument that the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The fifteenth amendment, it will be seen, does not forbid denying the franchise to citizens except upon certain specified grounds, and it is matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent. Minors, who equally with adult persons are citizens, are still excluded [as were also women before the adoption of the nineteenth amendment]; and sometimes persons who have been convicted of infamous crimes [are excluded] * * *. In some States laws will be found in existence which, either generally or in particular cases, deny the right to vote to those persons who lack a specified property qualification, or who do not pay taxes. In some States idiots and lunatics are also expressly excluded; and it has been supposed that these unfortunate classes, by the common political law of England and of this country, were excluded with

women, minors, and aliens from exercising the right of suffrage, even though not prohibited therefrom by any express constitutional or statutory provision. Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature, or otherwise than by an amendment of the constitution. One of the most common requirements is, that the party offering to vote shall reside within the district which is to be affected by the exercise of the right. If a State officer is to be chosen, the voter should be a resident of the State; and if a county, city or township officer, he should reside within such county, city, or township. This is the general rule; and for the more convenient determination of the right to vote, and to prevent fraud, it is now generally required that the elector shall only exercise within the municipality where he has his residence his right to participate in either local or general elections. Requiring him to vote among his neighbors, by whom he will likely be known, the opportunities for illegal or fraudulent voting will be less than if the voting were allowed to take place at a distance and among strangers. And wherever this is the requirement of the constitution, any statute permitting voters to deposit their ballots elsewhere must necessarily be void. * * *

"While it is true that the legislature cannot add to the constitutional qualifications of electors, it must nevertheless devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein. For this purpose the times of holding elections, the manner of conducting them and of ascertaining the result, are prescribed, and heavy penalties are imposed upon those who shall vote illegally, or instigate others to do so, or who shall attempt to preclude a fair election or to falsify the result. The propriety, and indeed the necessity, of such regulations are undisputed. In some of the States it has also been regarded as important that lists of voters should be prepared before the day of election, in which should be

registered the name of every person qualified to vote. Under such a regulation, the officers whose duty it is to administer the election laws are enabled to proceed with more deliberation in the discharge of their duties, and to avoid the haste and confusion that must attend the determination on election day of the various and sometimes difficult questions concerning the right of individuals to exercise this important franchise. Electors, also, by means of this registry, are notified in advance what persons claim the right to vote, and are enabled to make the necessary examination to determine whether the claim is well founded, and to exercise the right of challenge if satisfied any person registered is unqualified. When the constitution has established no such rule, and is entirely silent on the subject, it has sometimes been claimed that the statute requiring voters to be registered before the day of election, and excluding from the right all whose names do not appear upon the list, was unconstitutional and void, as adding another test to the qualifications of electors which the constitution has prescribed, and as having the effect, where electors are not registered, to exclude from voting persons who have an absolute right to that franchise by the fundamental law. This position, however, has not been generally accepted as sound by the courts. The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the legislature, unless forbidden. Many resting upon the same principles are always prescribed, and have never been supposed to be open to objection. Although the constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls, and there deposit their ballots, and not elsewhere, was a violation of the Constitution, because prescribing an additional qualification, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem

to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential. And where the law requires such a registry, and forbids the reception of votes from any persons not registered, an election in a township where no such registry has ever been made will be void, and cannot be sustained by making proof that none in fact but duly qualified electors have voted. It is no answer that such a rule may enable the registry officers, by neglecting their duty, to disfranchise the electors altogether; the remedy of the electors is by proceedings to compel the performance of the duty; and the statute, being imperative and mandatory, cannot be disregarded. The danger, however, of any such misconduct on the part of officers is comparatively small, when the duty is entrusted to those who are chosen in the locality where the registry is to be made, and who are consequently immediately responsible to those who are interested in being registered.

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void."

And the same text-writer, in his work on Taxation (4th ed.) vol. 4, pp. 3497-3507, says:

"A capitation or poll tax is a tax on the poll without reference to property, business or other circumstances. It is imposed numerically upon citizens without reference to their capacity to sustain the burden. A poll or capitation tax is not a tax upon property but is a tax against the person. However, a poll tax, although not a tax on property, is nevertheless a tax within constitutional and statutory provisions in relation to taxes. * * * Capitation or poll taxes are generally re-

garded as a proper means for raising revenue for public purposes. The legislature of a State ordinarily has power to impose a poll tax, in the absence of direct constitutional prohibition or limitation, and constitutional objections have for the most part been overruled and the imposition of the tax held constitutional. In some States the constitution itself expressly authorizes or levies a poll tax; but constitutional provisions relating to capitation taxes are generally not self-executing. * * * It is generally held that the requirement in a State constitution that taxes shall be equal and uniform does not apply to poll taxes. * * * A poll tax on males does not violate the constitutional provision because of discrimination on account of sex. * * * It is within the power of the legislature to make the payment of poll taxes a condition precedent to the right to vote."

We have made the above lengthy quotations from Mr. Cooley's works on "Constitutional Limitations" and "Taxation" because in a brief way the principles laid down by the text-writer and the cases cited in the lengthy annotations thereto cover the substantial questions in this record. In addition, see also the following authorities: Frieszleben *v.* Shallcross, 9 Houst. (Del.) 1 (19 Atl. 576, 8 L. R. A. 337); Short *v.* Maryland, 80 Md. 392 (31 Atl. 322, 29 L. R. A. 404); Hawkins *v.* Hawkins, 350 Ill. 227 (183 N. E. 9); United States *v. Reese,* 92 U. S. 214 (23 L. Ed. 563); Thurston County *v.* Tenino Stone Quarries, 44 Wash. 351 (87 Pac. 634, 12 Ann. Cas. 314); Peacock *v.* Pratt, 121 Fed. 772, 775; LaBelle Iron Works *v.* U. S., 256 U. S. 377 (41 Sup. Ct. 528, 65 L. Ed. 998); Pohl *v.* Chicago, &c., R. Co., 52 Mont. 572 (160 Pac. 515); Olander *v.* Hollowell, 193 Iowa 979 (188 N. W. 667); State *ex rel.* Atty.-Gen. *v.* Dillon, 32 Fal. 545 (14 So. 383, 22 L. R. A. 124, 20 C. J. 76, § 37); McMahon *v.* Savannah, 66 Ga. 217 (42 Am. R. 65). It follows from what is said above that the court did not err in sustaining the motion to dismiss the petition in this case.

Judgment affirmed. All the Justices concur, except Atkinson, J., absent because of illness.

FILE COPY

No. [redacted] 9

Office - Supreme Court, U. S
FILED
MAR 4 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

NOLEN R. BREEDLOVE,
Appellant,

vs.

T. EARL SUTTLES, as TAX COLLECTOR,
Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL

J. IRA HARRELSON,
1517-22 Marietta St. Bldg.,
Atlanta, Georgia
ARTHUR GARFIELD HAYS,
120 Broadway,
New York City
Counsel for Appellant.

Curtiss Printing Company, Inc., Atlanta, Ga.

SUBJECT INDEX

	Page
Statement	1
Statutory and Constitutional Provisions	2
Assignments of Error	2
Laws are arbitrary, unreasonable and capricious	3
Statement as to jurisdiction	4
Constitutional questions serious	4
Application of privileges and immunities	5
Classification contrary to Fourteenth and Nineteenth Amendments	5
Date of judgment	6
Date of appeal	6
References to and quotations from the record	7
Failure to append opinion of Supreme Court of Georgia	8
Request for incorporation of opinion of Georgia Supreme Court	9
Sufficiency of assignments of error	9
Satisfaction of requirements of Rule 12	10
Request to amend appeal papers	11
Basis of judgment of Supreme Court of Georgia	11
Conclusion	12
Certificate of service	13

INDEX OF CASES

	Page
American Express Co. v. Michigan, 177 U. S. 440	4
Atchison, Topeka & Santa Fe Railroad v. Meyers, 76 Fed. 443	10
Chicago, Milwaukee & St. Paul Railroad v. Bennett, 181 Fed. 799	10
Code of 1933	
Section 34-103	2
Section 34-113	2
Section 34-114	2
Section 92-108	2
Colgate v. Harvey, 296 U. S. 404	4, 5
Constitution of Georgia	
Article II, Section 1, Paragraph 3	2
Constitution of the United States	
Preamble	1
Article I, Section 8, Clause 1	1
Article I, Section 9, Clause 4	1
Article IV, Section 2, Clause 1	1
Article IV, Section 4	1
Article VI, Clause 6	1
Fourteenth Amendment	1
Fifteenth Amendment	1
Nineteenth Amendment	1
Hartman v. Greenhow, 102 U. S. 672	4
Home Insurance Co. v. Dick, 281 U. S. 397, 407	12
Judicial Code	
Section 269 (28 U.S.C.A. Sec. 391)	9

INDEX OF CASES—*Continued*

	Page
Land and Water Co. v. San Jose Ranch, 189 U. S. 177	12
Louisville and Nashville Railroad v. Melton, 218 U. S. 36, 49	4
Miller v. Schoene, 276 U. S. 272, 48 S. Ct. 410	4
Phillips & Colby Construction Co. v. Seymour, 91 U. S. 646, 648	9
Rogers v. Hennepin County, 240 U. S. 184, 188	11
Rule 27 of Rules of Supreme Court	10
Seaboard Air Line Railway Co. v. Watson, 287 U. S. 86	6
St. Louis & Iron Mt. Railroad v. McWhirter, 229 U. S. 265, 276	11
Sugarman v. The United States, 249 U. S. 182	10
Western Turf Association v. Greenberg, 204 U. S. 359	4
Whitfield v. Ohio, 297 U. S. 431, 436	12
Zucht v. King, 260 U. S. 174, 176	4

IN THE

Supreme Court of the United States

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, as TAX COLLECTOR,

Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL

In an appeal from a final judgment of the Supreme Court of Georgia, affirming a judgment by the Superior Court of Fulton County in that State, the appellee now moves to dismiss on technical grounds. The judgment denied the appellant's petition for mandamus to require the appellee to permit the appellant to register to vote for electors for President and Vice President of the United States and Senators and Representatives in Congress, without paying the poll tax required by the Constitution and Statutes of Georgia. The appellant contended that these provisions were invalid as being in contravention of the Preamble to the Constitution of the United States; Article I, Section 8, Clause 1; Article I, Section 9, Clause 4; Article IV, Section 2, Clause 1; Article IV, Section 4; Article VI, Clause 2 thereof; and the Fourteenth, Fifteenth and Nineteenth Amendments thereto. The appellee's oral motion to dismiss the petition was sustained in the lower Court. No testimony was taken. The judgment was affirmed by the Supreme Court of Georgia on the ground that the imposition of the poll tax was not violative of the aforementioned constitutional provisions.

The constitutional and statutory provisions objected to read as follows:

> Art. II, Sec. 1, Par. 3. "To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law . . . "
>
> 34-103. "I do swear, or affirm, that . . . I have paid all poll taxes which I have had an opportunity of paying agreeably to law; . . ." (Acts 1894, pp. 116; Acts 1908, pp. 58; Acts 1913, pp. 115; Const. Art. II, Sec. 1, Par. III and Section 2-603.)
>
> 34-113. "No one shall be allowed to register for a single election unless he shall have paid all poll taxes due by him at least six months before the date of the election." (Acts 1908, pp. 58; Const., Art. II, Sec. 1, Par. III and Sec. 2-603.)
>
> 34-114. "No tax collector shall allow any person to sign his name in the voters' book unless he is satisfied, at the time, that the poll taxes due by said voter are paid and that he is otherwise qualified." (Acts 1894, pp. 115, 117; Const., Art. II, Sec. 1, Par. III and Sec. 2-603.)
>
> 92-108. "There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1.00, . . .: Provided, that this tax shall not be demanded of . . . female inhabitants who do not register for voting." (Acts 1927, pp. 57.)

The appellant now assigns as error the ruling that the above-quoted provisions of the Georgia Constitution and Statutes do not:

1. Violate the constitutional guarantee of a republican form of government required by Article IV, Section 4;

2. Deprive him of liberty without due process of law in violation of the Fourteenth Amendment;

3. Abridge his privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment;

4. Deny him the equal protection of the laws in violation of the Fourteenth Amendment;

5. Abridge his right to vote on account of sex, in violation of the Nineteenth Amendment.

The Georgia laws which the appellant contends to be repugnant to the several provisions of the Constitution of the United States set out herein have arbitrarily restricted the vote in Georgia to eight per cent of the population, whereas an average of thirty-nine per cent of the population votes in states which do not require the payment of a poll tax as a prerequisite to the right to register and vote for the electors of the President and Vice President of the United States and the Members of the Congress. These and other arbitrary, unreasonable and capricious restrictions and discriminations, more fully set out in the appellant's Statement of Points to be Relied on, raise serious, substantial and undetermined federal questions which materially affect appellant and millions of others similarly situated.

The appellant contends that the privilege of voting for federal officials is one to which he is entitled, unrestricted by a tax arbitrarily imposed through hostile state invasion of his rights as a citizen of the United States. As such citizen he is entitled to participate in the choice of electors of the Presi-

dent and the Vice President of the United States and of Senators and Representatives in Congress and no state may exercise its taxing power so as to destroy this privilege. If the tax imposed by Georgia were increased to a high degree, as it can be if valid, it could easily be used for the purpose of destroying the elective franchise altogether, by reducing the percentage of voters to even less than eight per cent of the population of the State. Whatever property and other economic restrictions on the franchise may have been upheld in earlier periods of our history, the admission today that a state has the power to prevent its poorer inhabitants from participating in the choice of federal officials would be totally contrary to the contemporary spirit of American institutions, and inconsistent with the purposes announced in the Preamble to the United States Constitution.

The appellant cites the following decisions of the Supreme Court of the United States as indicating that that tribunal has jurisdiction to review the final judgment of the Supreme Court of the State of Georgia, which judgment expressly upheld the validity of the provision in the State Constitution and Statutes drawn in question in the original mandamus proceeding:

Colgate v. Harvey, 296 U. S. 404.
Miller v. Schoene, 276 U. S. 272, 48 S. Ct. 410.
Western Turf Association v. Greenberg, 204 U. S. 359.
American Express Co. v. Michigan, 177 U. S. 440.
Hartman v. Greenhow, 102 U. S. 672.

The constitutional questions raised are serious and not frivolous.

Zucht v. King, 260 U. S. 174, 176.
Louisville & Nashville Railroad v. Melton, 218 U. S. 36, 49.

The Supreme Court has never considered the constitutionality of a state poll tax. Prior decisions upholding the various qualifications imposed by states on their voters have sustained statutes which were less objectionable in character, in that they did not seek to limit the franchise by discriminating against impecunious members of the community. The privilege of a citizen of the United States to vote for federal officials is one which the United States Constitution protects from abridgment by a state's imposition of a heavy economic burden. The right to vote for such officials is, under twentieth century conditions, one which inheres in the appellant by reason of his United States citizenship.

The Supreme Court has recently expanded the application of the privileges and immunities clause of the Fourteenth Amendment.

Colgate v. Harvey, 296 U. S. 404.

It therefore becomes appropriate for the Court to reconsider earlier decisions, none of which involved the poll tax, holding that the right of suffrage is solely a matter of state concern. Political inequality based upon economic inequality is contrary to the basic postulates of the American democratic system.

The incidence of the poll tax falls upon the appellant much more heavily than on members of the opposite sex in that if he desires to register in a given year, he must first pay all taxes accumulated during prior years in which he did not register at all, whereas a female voter is only required to pay the poll tax for the year in which she actually registers. This is wholly an arbitrary and unreasonable classification contrary to the equal protection clause of the Fourteenth Amendment, and also constitutes an abridgment of the right to vote

by reason of sex contrary to the Nineteenth Amendment. The seventh assignment of error, which charges a violation of the Nineteenth Amendment, is an adequate assignment of the failure of the State Court to find that the Georgia Statute involves a discriminatory abridgment of the right to vote. It is not, as the appellee has asserted, a mere objection to an unequal distribution of the tax burden. Appellant's original petition and appeal papers show that he was denied the right to register to vote. Since our laws require that a person be registered before he can vote, it automatically follows that he is denied the right to vote. The case of *Seaboard Air Line Railway Company v. Watson*, 287 U. S. 86, cited by the appellee, contains an assignment of error far more lacking in particularity than the assignment presented in the appellant's papers.

The appellee has moved to dismiss, contending, in the first place, that the appellant's Statement Disclosing Jurisdiction contains neither the date of the judgment sought to be reviewed nor the date on which the application for this appeal was presented, as required by Rule 12 of the Supreme Court. The appellee is mistaken in asserting that the date of the judgment is omitted from the jurisdictional statement. That date (October 14th, 1936) is properly given at the top of the second page of the statement.

While it is true that the date on which the application for appeal was presented (January 13th, 1937) was inadvertently omitted from the Statement Disclosing Jurisdiction, the requirement was nevertheless substantially complied with, since this date appears in a number of other places in the moving papers, the Petition for Appeal, Appellant's Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof, the Praecipe, the Order of the Court Allowing the Appeal, the Citation of the

Court giving Notice of the Appeal and the Notice to Appellee pursuant to Rule 12, paragraph 2 of the Rules of the Supreme Court of the United States serving appellee with copies of the Petition for Appeal, Order Allowing the Appeal, Assignments of Error, and Statement Disclosing Jurisdiction in said case all bearing the date of January 13th, 1937. In addition thereto, appellee personally acknowledged service upon the Praecipe, Appellant's Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof and the Notice to Appellee serving him with copies of all the appeal papers including the Statement Disclosing Jurisdiction on January 13th, 1937, and said date appears on the original of said papers immediately above the signature of appellee. Also, the Statement Disclosing Jurisdiction and all other papers disclose that they were filed in the office of the Clerk of the Supreme Court of Georgia on January 13th, 1937. The appellant assumes that the purpose of this provision in the Rules is to make it apparent to the Court that the appeal was filed within the requisite ninety days. Since the latter date is elsewhere indicated and the time limitation was scrupulously observed, the appellant respectfully suggests that the regrettable omission of the date of presentation from a particular page, being merely a technical error, should not cause the Court to dismiss the appeal.

The appellee also objects that the jurisdictional statement does not contain sufficiently specific references to or quotations from the record. The appellant respectfully submits that the requirements of this Section of Rule 12 have been substantially complied with. No testimony was taken in the lower Court and appellant's counsel believes that this rule applies particularly to quotations from testimony. The entire record of the proceedings in the lower Court, which embraces nothing more than the petition and the amendments thereto

with the Judge's order of dismissal thereon upon the oral motion of counsel for defendant in the lower Court that the same set forth no cause of action (the oral motion under the Georgia practice being the equivalent of a general demurrer) contains only twenty-two pages. Moreover, the appellant has expressly specified those portions of the record which he believes to be necessary to a consideration of the points raised on the appeal, sufficient to support his assertions that the rulings of the lower Courts were of a nature to satisfy the statutory provisions relating to the jurisdiction of the Supreme Court of the United States (pp. 4 of the appellant's paper entitled "Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof.")

The appellant's failure to append the opinion of the Supreme Court of Georgia was wholly due to inadvertence, caused primarily by the fact that a misunderstanding arose as to the responsibility for fulfilling this requirement as between the two attorneys for the appellant, who live in the widely separated cities of Atlanta and New York. Both the Praecipe and the Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof filed with the Clerk of the Supreme Court of Georgia for transmission to the Supreme Court of the United States contain the request that the full text of the judgment of the Supreme Court of Georgia be incorporated as a part of the appeal of appellant. This was done upon the construction placed upon the rules by appellant's counsel that the Statement Disclosing Jurisdiction and the opinion of the Supreme Court of Georgia transmitted to Washington pursuant to the Praecipe would both be reduced to printed form under the supervision of the Clerk of the Supreme Court of the United

States, and that to include the full text of the decision in appellant's Statement Disclosing Jurisdiction and also specify in the Praecipe that it should be made a part of the record by the Clerk in the Supreme Court of Georgia would cause it to appear twice in the appeal upon its arrival in Washington. It is therefore believed that the omission of the opinion from the Statement Disclosing Jurisdiction can not in any conceivable manner prejudice the rights of the appellee, but in order to satisfy the technical objections, we respectfully ask leave of the Court to permit the incorporation of the full Georgia Supreme Court opinion, which is appended to this brief as Exhibit "a," in the original record on appeal when that is forwarded to the printer. In support of this request, the appellant cites *Section* 269 *of the Judicial Code* (28 U.S.C.A. Sec. 391) which reads as follows:

> "* * * On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the Court shall give judgment after an examination of the entire record before the Court, without regard to technical errors, or exceptions which do not affect the substantial rights of the parties."

The appellee is mistaken in asserting that the assignments of error are not sufficiently specific. The requirement of Rule 9 that the assignments "set out separately and particularly" each error asserted, has been fully complied with. The purpose of the assignment is not to detail the precise reasons why an appellant believes that the respective constitutional rights asserted were denied by the judgment of a State Court; it is rather, to indicate on which constitutional grounds he is seeking a reversal and to limit the argument in the Supreme Court to these grounds.

Phillips & Colby Construction Co. v. Seymour,
91 U. S. 646, 648.

The practice of restating, in the formal assignments, the reasons why a lower Court's action is deemed to have been erroneous is too cumbersome and argumentative and has not met with the approval of the Courts.

Chicago, Milwaukee & St. Paul Railroad V. Bennett, 181 Fed. 799.

Atchison, Topeka & Santa Fé Railroad v. Meyers, 76 Fed. 443.

It is enough to specify the particular clauses of the Constitution on which the appellant intends to rely, in order that the Court and the appellee may readily perceive what the issues are to be. The appellee's quotation from *Sugarman v. The United States,* 249 U. S. 182, 184, is not only incorrect, but also inappropriate to the instant case. The Court was not, in the quoted passage, ruling upon the sufficiency of the form of the appellant's assignments, but was asserting that since the constitutional questions raised were unsubstantial in that particular case, the mere assertion of a claim would not warrant the Court's assuming jurisdiction.

Finally, the Supreme Court's own rules make it clear that the Court will not necessarily treat an appellant's failure to satisfy the detailed requirements of Rule 12 in the first instance as an obstacle to its assuming jurisdiction. The recent amendment to Rule 27 permits counsel to correct such a failure at the time the final brief is filed, as little as three weeks before a case is called for hearing.

> "If paragraph 1 of Rule 12 has not been complied with, a concise statement of the grounds on which the jurisdiction of this Court is invoked, embodying all that is required to be set forth in the statement described in that paragraph,"

may be included in the later brief.

The appellee is therefore not warranted in moving for dismissal on the technical grounds presented in his motion, and the appellant respectfully requests that the Court permit him to amend his appeal papers so as to cure any such purely technical defects as may presently appear therein.

The appellee also contends that the case below was not determined solely on the federal constitutional ground, stating that his oral motion to dismiss challenged the appellant's right to relief "upon any grounds whatsoever." Whatever may have been the grounds of the appellant's motion, it is clear from the opinion of the Georgia Supreme Court appended hereto that the decision was itself based upon the constitutional question and on that alone. It is the language of the highest state Court and not that of a party which must be looked to to determine the grounds of a decision.

> "It is well-settled that where the state Court does not decide against the plaintiff in error upon an independent state ground, but, deeming the Federal question to be before it, actually entertains it and decides it adversely to the federal right asserted, this Court has jurisdiction to review the judgment, assuming it to be a final judgment as it is here."
>
> *Rogers v. Hennepin County*, 240 U. S. 184, 188.
>
> "Mere conjecture may not be indulged in for the purpose of concluding that because there was a potentiality of considering the case from a non-Federal point of view, therefore it was considered and decided in that aspect."
>
> *St. Louis & Iron Mt. R. R. v. McWhirter*,
> 229 U. S. 265, 276.

The important consideration is whether the Federal constitutional question was necessarily passed on by the highest Court of the State, and not whether it was raised or adjudicated in the trial Court.

Whitfield v. Ohio, 297 U. S. 431, 436.
Home Insurance Co. v. Dick, 281 U. S. 397, 407.
Land and Water Co. v. San Jose Ranch, 189 U. S. 177.

While we believe that the decisions and rules of the Supreme Court cited above are sufficient to dissolve appellee's motion of any merit which it might appear to have from a cursory examination thereof, we, nevertheless, desire to impress upon the Court the seriousness of the questions raised by appellant from the standpoint of the effect of the laws complained of upon the citizens of Georgia and the South. The right of a State to restrict the privilege of citizens to vote through unreasonable, capricious and arbitrary legislation to eight per cent of the population, when thirty-nine per cent votes in States which do not impose such burdens upon the people in national elections, has never been passed upon by this Court upon the basis presented in this case. The laws of which appellant complains affect millions of persons in Georgia and other Southern States. The tax imposed is not levied or collected as is customary under all other forms of tax legislation, i. e., through levy and pursuit, but is aimed directly toward restricting the right of impecunious citizens to vote in national elections and otherwise. These laws deprive the majority of the poorer citizens of Georgia and other sections of the South of substantial economic, educational and political privileges to which they would be otherwise entitled, thus imposing upon them an intolerable tyranny as set out in the original petition, which will be a part of the record when this case is considered by this Court upon its

merits. It would be a grave injustice to millions of unfortunate citizens for this Court to refuse jurisdiction of the case upon the purely technical grounds urged in appellee's motion.

WHEREFORE, the appellant prays that the appellee's motion to dismiss the appeal be denied and that the Court do take jurisdiction of the case and allow the appeal.

Respectfully submitted,

J. IRA HARRELSON,
ARTHUR GARFIELD HAYS,
Counsel for Appellant.

STATE OF GEORGIA,
COUNTY OF FULTON.

I hereby certify that I am of counsel for the appellant in these proceedings, and that I have this day served a copy of the foregoing brief on counsel for appellee by mailing a copy of the same to Charles B. Shelton, Ralph H. Pharr and W. S. Northcutt, 504 First National Bank Building, Atlanta, Georgia, this the 10th day of February, 1937.

J. IRA HARRELSON,
Attorney for Appellant.

EXHIBIT "A"

BREEDLOVE v. SUTTLES, Tax Collector

No. 11456

Supreme Court of Georgia

Oct. 14, 1936

Constitutional Law, Key ½, 84, 91, 205(1), 274;

Elections, Key 18;

States, Key 4;

Taxation, Key 37, 40(1).

Statutes and constitutional provisions requiring payment of poll tax as prerequisite to right to register and vote *held* not violative of due process clause of Federal Constitution, of federal constitutional provisions guaranteeing a republican form of government to every state, requiring uniform taxation and levying of direct taxes in proportion to census, relating to citizens' privileges, making Federal Constitution supreme law of land, relating to right to vote, permitting both sexes to vote, and relating to rights of conscience and right to petition government, or of provisions of State Constitution requiring uniform taxation and recognizing Federal Constitution as supreme law of land (Code 1933, Sections 34-103, 34-113, 34-114, 92-108; Const. Ga. art. 2, sec. 1, par. 3; art. 7, sec. 2, par. 1; art. 12, sec. 1, par. 1; Const. U. S. art. 1, sec. 8, cl. 1; art. 1, sec. 9, cl. 4; art. 4, sec. 2, cl. 1; art. 4, sec. 4; art. 6, cl. 2; Amends. 1; 14, sec. 1; 15, sec. 1; 19.)

SYLLABUS BY THE COURT

The court properly sustained the motion to dismiss the petition in this case.

Error from Superior Court, Fulton County; Hugh M. Dorsey, Judge.

Mandamus proceeding by Nolen R. Breedlove against T. E. Suttles, tax collector. To review a judgment for defendant, plaintiff brings error.

Judgment in accordance with opinion.

Nolen R. Breedlove, alleging himself to be 28 years of age and to have resided in Fulton county continuously for more than 7 years, filed his petition for mandamus against T. E. Suttles, tax collector of Fulton county, to require said officer to allow petitioner to register for elections without the payment of poll taxes and without exacting of him the oath prescribed by statute, containing the provision "that I have paid all poll-taxes which I have had an opportunity of paying agreeably to law." The petitioner contends that article 2, section 1, paragraph 3, of the Constitution of Georgia, (Code, 2-603), as amended, and all statutes enacted in pursuance thereof, to wit, Code Sections 34-103, 34-113, 34-114, 92-108, requiring the payment of the poll tax as a prerequisite to the right to register and vote for candidates seeking the offices of President and members of Congress, are contrary to and in derogation of the preamble and the following provisions of the Constitution of the United States: Article 4, section 4, guaranteeing to every state a republican form of government; article 1, section 8, clause 1, as to uniform tax; article 1, section 9, clause 4, which prohibits the laying of capitation or other direct tax unless it is in proportion to the census or enumeration; article 4, section 2, clause 1, declaring that the citizens of each state shall be entitled to all privileges and immunities of the citizens in the several states; article 6, clause 2, declaring the Federal Constitution to be

the supreme law of the land; amendment 14, section 1, prohibiting states making or enforcing laws abridging the privileges and immunities of citizens of the United States; amendment 15, section 1, guaranteeing the rights of citizens without regard to race, color, or previous condition of servitude; amendment 19, prohibiting any laws denying or abridging the right of citizens to vote on account of sex; the First Amendment, relating to the rights of conscience and the right to petition the government for a redress of grievances; the Fourteenth Amendment, as to the due process of law; the Fifteenth Amendment, that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

And the foregoing statutes in regard to registration and the payment of poll taxes are attacked as contrary to and in violation of the uniform tax requirement prescribed by our State Constitution, that all taxes shall be ad valorem; and it is alleged that these statutes are contrary to the First Amendment to the Constitution of the United States as to "rights of conscience, freedom of the press," etc., and contrary to that section of our State Constitution (article 12, sec. 1, par. 1) which recognizes the Constitution of the United States as the supreme law of the land; that article 2, section 1, paragraph 3, of the Constitution of Georgia, as amended, is in conflict with other provisions of our State Constitution, to wit, article 12, section 1, and article 7, section 2, paragraph 1; that said paragraph of the State Constitution, and the laws enacted thereunder, are in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and the clause in said amendment which defines the word "liberty." An oral motion to dismiss the petition was sustained, and the plaintiff excepted.

J. Ira Harrelson, of Atlanta, for plaintiff in error.

Carter, Carter & Johnson, of Atlanta, for defendant in error.

BECK, Presiding Justice.

The questions involved in this case by the objections raised as to the constitutionality of certain provisions of our law have been discussed by able text-writers and in many judicial opinions rendered by the courts of this country. In one part of his work on Constitutional Limitations, 1358-1370, the eminent writer, Justice Cooley, says: "We have said, that, though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulation of elections, including the prescribing in qualifications for suffrage, is left by the national constitution to the several States, except as it is provided by that instrument that the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The fifteenth amendment it will be seen, does not forbid denying the franchise to citizens except upon certain specified grounds, and it is matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent.

Minors, who equally with adult persons are citizens, are still excluded [as were also women before the adoption of the nineteenth amendment]; and sometimes persons who have been convicted of infamous crimes [are excluded]. * * * In some States laws will be found in existence which, either generally or in particular cases, deny the right to vote to those persons who lack a specified property qualification, or who do not pay taxes. In some States idiots and lunatics are also expressly excluded; and it has been supposed that these unfortunate classes, by the common political law of England and of this country, were excluded with women, minors, and aliens from exercising the right of suffrage, even though not prohibited therefrom by any express constitutional or statutory provision. Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature or otherwise than by an amendment of the constitution. One of the most common requirements is, that the party offering to vote shall reside within the district which is to be affected by the exercise of the right. If a State officer is to be chosen, the voter should be a resident of the State; and if a county, city or township officer, he should reside within such county, city, or township. This is the general rule; and for the more convenient determination of the right to vote, and to prevent fraud, it is now generally required that the elector shall only exercise within the municipality where he has his residence his right to participate in either local or general elections. Requiring him to vote among his neighbors, by whom he will likely be known, the opportunities for illegal or fraudulent voting will be less than if the voting were allowed to take place at a distance and among strangers. And wherever this is the requirement of the constitution, any statute permitting voters to deposit their ballots elsewhere must necessarily be void. * * *

"'While it is true that the legislature cannot add to the constitutional qualification of electors, it must nevertheless devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein. For this purpose the times of holding elections, the manner of conducting them and of ascertaining the result, are prescribed, and heavy penalties are imposed upon those who shall vote illegally, or instigate others to do so, or who shall attempt to preclude a fair election or to falsify the result. The propriety, and indeed the necessity, of such regulations are undisputed. In some of the States it has also been regarded as important that lists of voters should be prepared before the day of election, in which should be registered the name of every person qualified to vote. Under such a regulation, the officers whose duty it is to administer the election laws are enabled to proceed with more deliberation in the discharge of their duties, and to avoid the haste and confusion that must attend the determination on election day of the various and sometimes difficult questions concerning the right of individuals to exercise this important franchise. Electors, also, by means of this registry, are notified in advance what persons claim the right to vote, and are enabled to make the necessary examination to determine whether the claim is well founded, and to exercise the right of challenge if satisfied any person registered is unqualified. When the constitution has established no such rule, and is entirely silent on the subject, it has sometimes been claimed that the statute requiring voters to be registered before the day of election, and excluding from the right all whose names do not appear upon the list, was unconstitutional and void, as adding another test to the qualifications of electors which the constitution has prescribed, and as having the effect, where electors are not registered, to exclude from

voting persons who have an absolute right to that franchise by the fundamental law. This position, however, has not been generally accepted as sound by the courts. The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the legislature, unless forbidden. Many resting upon the same principle are always prescribed, and have never been supposed to be open to objection. Although the constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls, and there deposit their ballots, and not elsewhere, was a violation of the constitution, because subscribing an additional qualificaiton, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential. And where the law requires such a registry, and forbids the reception of votes from any persons not registered, an election in a township where no such registry has ever been made will be void, and cannot be sustained by making proof that none in fact but duly qualified electors have voted. It is no answer that such a rule may enable the registry officers, by neglecting their duty, to disfranchise the electors altogether; the remedy of the electors is by proceedings to compel the performance of the duty; and the statute, being imperative and mandatory, cannot be disregarded. The danger, however, of any such misconduct on the part of officers is comparatively small, when the duty is entrusted to those who are

chosen in the locality where the registry is to be made, and who are consequently immediately responsible to those who are interested in being registered.

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void."

And the same text-writer, in his work on Taxation (4th Ed.) vol. 4, pp. 3497-3507, says: "A capitation or poll-tax is a tax on the poll without reference to property, business or other circumstances. It is imposed numerically upon citizens without reference to their capacity to sustain the burden. A poll or capitation tax is not a tax upon property but is a tax against the person. However, a poll-tax, although not a tax on property, is nevertheless a tax within constitutional and statutory provisions in relation to taxes. * * * Capitation or poll-taxes are generally regarded as a proper means for raising revenue for public purposes. The legislature of a State ordinarily has power to impose a poll-tax, in the absence of direct constitutional prohibition or limitation, and constitutional objections have for the most part been overruled and the imposition of the tax held constitutional. In some States the constitution itself expressly authorizes or levies a poll-tax; but constitutional provisions relating to capitation taxes are generally not self-executing. * * * It is generally held that the requirement in a State constitution that taxes shall be equal and uniform does not apply to poll-taxes. * * * A poll-tax on males does not violate the constitutional provision because of discrimination on account of sex. * * * It is within the power of the legislature to make the payment of poll-taxes a condition precedent to the right to vote."

We have made the above lengthy quotations from Mr. Cooley's works on "Constitutional Limitations" and "Taxation" because in a brief way the principles laid down by the text-writer and the cases cited in the lengthy annotations thereto cover the substantial questions in this record. In addition, see also the following authorities: Frieszleben v. Shallcross, 9 Houst. (Del.) 1, 19 A. 576, 8 L.R.A. 337; Short v. State of Maryland, 80 Md. 392, 31 A. 322, 29 L.R.A. 404; Hawkins v. Hawkins, 350 Ill. 227, 183 N.E. 9; United States v. Reese, 92 U.S. 214, 23 L.Ed. 563; Thurston County v. Tenino Stone Quarries, 44 Wash. 351, 87 P. 634, 9 L.R.A. (N.S.) 306, 12 Ann. Cas. 314; Peacock & Co. v. Pratt (C.C.A.) 121 F. 772, 775; La Belle Iron Works v. U. S., 256 U.S. 377, 41 S. Ct. 528, 65 L.Ed. 998; Pohl v. Chicago, M. & St. P. R. Co., 52 Mont. 572, 160 P. 515; Olander v. Hollowell, 193 Iowa, 979, 188 N.W. 667; State ex rel. Atty.-Gen. v. Dillon, 32 Fla. 545, 14 So. 383, 22 L.R.A. 124; 20 C.J. 76, Sec. 37; McMahon v. Mayor, etc., of Savannah, 66 Ga. 217, 42 Am. Rep. 65. It follows from what is said above that the court did not err in sustaining the motion to dismiss the petition in this case.

Judgment affirmed.

All the Justices concur, except ATKINSON, J., absent because of illness.

FILE COPY

No. 9

Office - Supreme Court, U. S.
FILED
NOV 10 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

NOLEN R. BREEDLOVE,
Appellant,

vs.

T. EARL SUTTLES, as TAX COLLECTOR,
Appellee.

APPELLANT'S BRIEF.

ARTHUR GARFIELD HAYS,
IRA HARRELSON,
HENRY G. VAN VEEN,
DAPHNE ROBERT,
Counsel for Appellant.

INDEX.

	PAGE
Statement of the Case	1
Point I. The Court has jurisdiction to hear and determine the issues	3
Point II. The statute is repugnant to the Nineteenth Amendment	6
Point III. The Georgia Poll Tax Statute denies the citizens of Georgia the equal protection of the laws in violation of the Fourteenth Amendment	10
Point IV. The imposition of a poll tax as a prerequisite to voting in the State of Georgia is a denial of a privilege or immunity of a citizen of the United States within the meaning of the Fourteenth Amendment	14
Point V. The Judgment of the Supreme Court of Georgia should be reversed	17
APPENDIX.	
The population and voting population of the United States and effect of poll tax on the elective franchise	18

Cases Cited.

	PAGE
American Express Company v. Michigan, 177 U. S. 440	5
Colgate v. Harvey, 296 U. S. 404	5, 16
Ex Parte Yarbrough, 110 U. S. 651	16
Graves v. Eubank, 205 Ala. 174	7, 8
Gulf, Colorado & Sante Fe R. R. v. Ellis, 165 U. S. 150, 155	11, 12
Guinn v. United States, 238 U. S. 347	7, 16
Hartman v. Greenhow, 102 U. S. 672	5
Hawthorne v. Turkey Creek School District, 162 Ga. 462	8, 9, 13
Leser v. Garnett, 258 U. S. 130	8
Louisville v. Nashville, 218 U. S. 36, 49	6
McPherson v. Blacker, 146 U. S. 1	13, 15
Miller v. Schoene, 276 U. S. 272	5
Minor v. Happersett, 21 Wall. 162	13, 15
Morgan v. State, 179 Ind. 300	12
Newberry v. U. S., 256 U. S. 232	16
Nixon v. Herndon, 273 U. S. 536	16
Prewitt v. Wilson, 242 Ky. 231	8, 9
Re Kemmler, 136 U. S. 436	16
Taylor v. Thomas, 89 U. S. 479	10
Western Turf Assoc. v. Greenberg, 204 U. S. 359	5
Zucht v. King, 260 U. S. 174	6

Miscellaneous Cited.

J. Dougherty Electoral System of the United States	5
Kirk Porter History of Sufferage in the United States	5
Mr. Justice Cooley Constitutional Limitations	10

Statutes Cited.

Code of Georgia of 1933. Section 81-304	1
Constitution of the State of Georgia	1
Code of Georgia of 1933. Section 34-103	3
Code of Georgia of 1933. Section 34-114	2
Code of Georgia of 1933. Section 92-108	2, 7, 10, 12
U. S. Constitution, 14th Amendment	12
U. S. Constitution, 19th Amendment	6

IN THE

Supreme Court of the United States

NOLEN R. BREEDLOVE,
Appellant,

vs.

T. EARL SUTTLES, as TAX COLLECTOR,
Appellee.

APPELLANT'S BRIEF.

Appellant appeals from a final judgment of the Supreme Court of Georgia, which affirmed a judgment of the Superior Court of Fulton County in that state, denying a petition for a writ of mandamus to require T. Earl Suttles, as tax collector, to permit the appellant to register to vote for electors for President and Vice-President of the United States and Senators and Representatives in Congress without paying the poll tax required by the Constitution and Statutes of the State of Georgia. The appellant contended that these provisions were invalid as being in contravention of the Preamble to the Constitution of the United States, Article 1, Section 8, Clause 1; Article 1, Section 9, Clause 4; Article 4, Section 2, Clause 1; Article IV, Section 4, Article VI, Clause 2 thereof; and the Fourteenth, Fifteenth and Nineteenth Amendments thereto.

At the beginning of the hearing in the lower court, the appellee moved orally to dismiss the petition. The motion was granted. No testimony was taken. Under the Georgia practice the motion is the equivalent of the common law demurrer and the facts as set forth in the petition are deemed to be true and are conceded as the facts of the case.

The Code of Georgia of 1933, Section 81-304.

The judgment was affirmed by the Supreme Court of Georgia on the ground that the imposition of the poll tax was not violative of the aforementioned constitutional provisions.

The constitutional and statutory provisions objected to read as follows:

> Constitution Art. II, Sec. 1, Par. 3. "To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law * * *"
>
> 34-103. "I do swear, or affirm, that * * * I have paid all poll taxes which I have had an opportunity of paying agreeably to law; * * *" (Acts 1894, p. 116; Acts 1908, p. 58; Acts 1913, p. 115; Const. Art. II, Sec. 1, Par. III and Section 2-603.)
>
> 34-114. "No tax collector shall allow any person to sign his name in the voters' book unless he is satisfied, at the time, that the poll taxes due by said voter are paid and that he is otherwise qualified" (Acts 1894, pp. 115, 117; Const., Art. II, Sec. 1, Par. III and Sec. 2-603).
>
> 92-108. "There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1.00 * * * Provided, that this tax shall not be demanded of * * * female inhabitants who do not register for voting" (Acts 1927 p. 57).

The appellant now assigns as error the ruling that the above-quoted provisions of the Georgia Constitution and Statutes do not

> (1) Abridge his right to vote on account of sex, in violation of the Nineteenth Amendment.

(2) Deny him the equal protection of the laws in violation of the Fourteenth Amendment.

(3) Abridge his privileges and immunities as a citizen of the United States in violation of the 14th amendment.

Upon docketing of the action in this court, the appellee moved to dismiss upon technical grounds, to which answer has heretofore been made in appellant's brief in opposition to such motion, and upon the further ground that this court was without jurisdiction in the case. This court thereafter reserved decision on the motion until after argument on the merits.

POINT I.

The Court has jurisdiction to hear and determine the issues.

The appeal to this court is based upon the Act of Congress of February 13, 1925, Chapter 229, 43 Stat. 938, which provides that the Court has jurisdiction on writs of error (under the later Act of January 31, 1928, Chapter 14, 45 Stat. 54 and Chapter 440, 45 Stat. 46 by appeal) to review "a final judgment or decree in any suit in the highest court of a state in which a decision could be had where is drawn in question * * * the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity. The Supreme Court of the State of Georgia is the highest court of that state having jurisdiction of the issues. The Constitution of the State of Georgia, paragraph 5, expressly confers upon the Supreme Court of Georgia the power to ultimately determine * * * "all cases that involve the construction of the Constitution of the State of Georgia or of the United States," * * * "in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question * * *."

This appeal is not aimed at poll taxes as such but against poll taxes which carry a deprivation of the elective franchise. Of all forty-eight states the laws of Georgia are most vicious in this respect. While poll taxes exist in thirty-six states,† only eleven require payment as a prerequisite to voting, and of these eleven only four require the cumulative payment of back taxes.‡ Of these four, Mississippi and Virginia restrict the period of back payments to two and three years respectively. In Georgia the accrued tax is cumulative and all back taxes of men (and men only) must be paid as a prerequisite to the exercise of the voting franchise.

The Georgia laws, which the appellant contends to be repugnant to the several provisions of the Constitution of the United States, set out herein, have restricted the vote in Georgia to eight percent. of the population, whereas an average of thirty-nine percent. of the population votes in states which do not require the payment of a poll tax.**

---

† States having poll tax, with asterisk before those states which require its payment as a condition of exercising the franchise.

*Alabama	Louisiana	New Jersey
*Arkansas	Maine	North Carolina
Connecticut	Maryland	North Dakota
Delaware	Massachusetts	Oklahoma
*Florida (see below)	Michigan	Pennsylvania
*Georgia	Minnesota	*Rhode Island
Idaho	*Mississippi	*South Carolina
Illinois	Missouri	*Tennessee
Indiana	Montana	*Texas
Iowa	Nebraska	*Vermont
Kansas	*Nevada	*Virginia
Kentucky (see below)	New Hampshire	Wyoming
		Washington

The Florida legislature has abolished the poll tax as a prerequisite for voting this year, but the repeal only becomes effective on January 1st, 1938.

Section 1441 of the Kentucky Statutes permits a municipality to require the payment of a poll tax as a prerequisite to voting.

‡ States requiring the payment of poll taxes in arrears.

Alabama Georgia Mississippi Virginia

In Mississippi they need only be paid two years back and in Virginia three years back.

** Appendix 1.

The appellant contends that the privilege of voting for federal officials is one to which he is entitled, unrestricted by a tax unreasonably imposed through state invasion of his rights as a citizen of the United States. As such citizen he is entitled to participate in the choice of electors of the President and the Vice President of the United States and of Senators and Representatives in Congress and no state may exercise its taxing power so as to destroy this privilege. If the tax imposed by Georgia were increased to a high degree, as it can be if valid, it could easily be used for the purpose of destroying the elective franchise altogether, by reducing the percentage of voters to even less than eight per cent of the population of the State. Whatever property and other economic restrictions on the franchise may have been upheld in earlier periods of our history,* the admission today that a state has the power to prevent its poorer inhabitants from participating in the choice of federal officials would be totally contrary to the contemporary spirit of American institutions, and inconsistent with the purposes announced in the Preamble to the United States Constitution.

The appellant cites the following decisions of the Supreme Court of the United States as indicating that that tribunal has jurisdiction to review the final judgment of the Supreme Court of the State of Georgia, which judgment expressly upheld the validity of the provision in the State Constitution and Statutes drawn in question in the original mandamus proceeding:

Colgate v. *Harvey,* 296 U. S. 404;
Miller v. *Schoene,* 276 U. S. 272, 48 S. Ct. 410;
Western Turf Association v. *Greenberg,* 204 U. S. 359;
American Express Co. v. *Michigan,* 177 U. S. 440;
Hartman v. *Greenhow,* 102 U. S. 672.

* J. Dougherty, Electoral System of the United States. Kirk Porter, History of Sufferage in United States.

The constitutional questions raised are serious and not frivolous.

> *Zucht* v. *King*, 260 U. S. 174, 176;
> *Louisville & Nashville Railroad* v. *Melton*, 218 U. S. 36, 49.

The Supreme Court has never considered the constitutionality of a state poll tax. Prior decisions upholding the various qualifications imposed by states on their voters have sustained statutes which were less objectionable in character, in that they did not seek to limit the franchise by discriminating against impecunious members of the community. Moreover they were decided many years ago and their reconsideration in view of present day conditions would be peculiarly appropriate. The privilege of a citizen of the United States to vote for federal officials is one which the United States Constitution protects from unreasonable abridgment by a state's imposition of an economic burden. The right to vote for such officials is, under twentieth century conditions, one which inheres in the appellant by reason of his United States citizenship.

POINT II.

The Statute is repugnant to the Nineteenth Amendment.

That the Georgia Statute is repugnant to the Nineteenth Amendment is apparent on its face. The Nineteenth Amendment provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex."

The statute provides:

Section 92-108 provides:

> "There shall be levied and collected each year upon every inhabitant of the state between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1.00 * * * provided that this tax shall not be demanded of * * * female inhabitants who do not register for voting". (Acts 1927, p. 57).

The statute here does precisely that very thing. It limits the right of male citizens, without imposing the same limitation upon females. It is an abridgement based upon sex.

That the Nineteenth Amendment was intended to apply with equal force to both sexes can hardly be questioned. In the language of *Graves* v. *Eubank, infra,* it protects the man and woman alike. This is in keeping with the entire history of the exercise of the right of franchise in the United States; the tendency has been to wipe out discriminations whether based on property, color, sex or creed.

The language is exactly similar to that of the Fifteenth Amendment and the decisions of this Court in interpreting the effect of the Fifteenth Amendment will apply with equal force to the Nineteenth. The decisions all indicate that the amendment is self-executing and strikes down all inconsistent legislation. This was the rule laid down by this Court in the case of *Guinn* v. *United States,* 238 U. S. 347. The Court there held:

> "While in the true sense, therefore the amendment gives no right of suffrage, it was long ago recognized that in operation its prohibition might measurably have that effect, that is to say, that as the command of the amendment was self-executing and reached without legislative action, the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out. Ex parte Yarbrough 110 U. S. 651; Neal v. Delaware, 103, U. S. 370."

That the Nineteenth Amendment is similarly self-executing has been held by this Court in *Leser* v. *Garnett,* 258 U. S. 130. In that case a constitutional limitation of suffrage to males under the organic law of Maryland was held to have become automatically inoperative with the enactment of the Nineteenth Amendment.

The Appellate Courts of other states have taken the same view.

Graves v. *Eubank,* 205 Ala. 174;
Prewitt v. *Wilson,* 242 Ky. 231.

Indeed the State of Georgia has held this to be the rule.

Hawthorne v. *Turkey Creek School District,* 162 Ga. 462.

In *Graves* v. *Eubank* (*supra*), the Supreme Court of Alabama had before it the exact converse of this case. Alabama had a poll tax which applied to males only. The payment of the tax was an essential prerequisite to voting; the petitioner, a female, attempted to pay her tax. The tax collector took the position that the Nineteenth Amendment did not amend the Alabama statute so as to impose a poll tax upon women and that women in the state of Alabama, under the then present state of the law might vote without the payment of any poll tax. On appeal, the Alabama Supreme Court granted a writ of mandamus, holding:

> "This amendment (the Nineteenth) automatically strikes from the state laws, organic and statutory, all discriminatory features authorizing one sex to vote and excluding the other, or placing conditions or burdens upon one, not placed upon the other, as a condition precedent to the right to vote * * *. *It protects the man and woman alike,* and a burden cannot be placed upon one sex that is not put upon the other, nor can a privilege, benefit or exemption be given one to the exclusion of the other." (Italics ours.)

The imposition of a discriminatory prerequisite to registration has been held to be an abridgement of the right to vote within the meaning of the amendment.

In *Prewitt* v. *Wilson,* 242 Ky. 231, a statute imposing a literacy test upon women only was held to be inoperative and void as a result of the enactment of the Nineteenth Amendment, the Kentucky Court there stating:

> "But it is said by the appellant that the terms of this statute granting a limited right of suffrage to women in school elections is not discriminatory because of sex, but merely sets up a test of literacy. The argument is a specious one, for male voters are not required to meet the same test. Its limitation only applies to women and it is, therefore, discriminatory against them. Illiterate women, no less than illiterate men, may exercise the right of suffrage in Kentucky and such votes cast for the appellee were properly counted."

The Georgia courts have themselves decided that the Georgia poll tax statute in question involves a burden upon men not imposed upon women. In *Hawthorne* v. *Turkey Creek School District,* 162 Ga. 462, the legality of a bond issue was attacked. The issue could only be valid if approved by a two-thirds vote of the qualified electors of the district. Several females voted in the election. The vote was close and the appellants moved to set aside the election upon the ground that the female votes in favor of the issue should not have been counted inasmuch as they had failed to pay their poll tax. The Court of Georgia held that the portion of the law of Georgia which resulted in women paying a poll tax only for the year in which they registered, while the tax upon men was cumulative was a valid act and permitted their votes to be counted.

This Court is thus faced with the situation where the Supreme Court of Georgia has decided that in Georgia there is a burden imposed on males which is not imposed upon females.

This Court has heretofore held in *Taylor* v. *Thomas*, 89 U. S. 479, that judicial and legislative acts hostile in their purpose or mode of enforcement to the authority of the national government, or which impair the rights of citizens to the constitution are invalid and void. The rights of men in Georgia have been seriously impaired, they have been subjected to a burden not equally imposed and it is respectfully submitted that in consequence so much of the constitution and statutes of Georgia as impose a greater burden upon men than upon women abridge the rights of Georgia's male citizens under the Nineteenth Amendment and are consequently void and of no effect.

POINT III.

The Georgia Poll Tax Statute denies the citizens of Georgia the equal protection of the laws in violation of the Fourteenth Amendment.

Section 92-108 of the Laws of 1927, impose three arbitrary and discriminatory classifications upon the citizens of Georgia. Under the terms of the Act only males and females between the ages of 21 and 60 are liable for its payment. There is thus established an age classification. The Act further provides special treatment for females, or a sex classification. Thirdly the statute establishes payment of the tax itself as a prerequisite to voting, or a monetary classification.

It is submitted by counsel for the appellant that all three of these classifications are arbitrary and improper and deprive the plaintiff of the equal protection of the laws guaranteed him by the Fourteenth Amendment. It is particularly significant that in the opinion of the Supreme Court of Georgia, disposing of this case, the Court cited as controlling law, a quotation of Mr. Justice Cooley, on his work on *Con-*

stitutional Limitations (p. 23 appellant's brief in opposition to motion to dismiss appeal). There Mr. Justice Cooley said:

> "All regulations of the elective franchise, however, must be reasonable, uniform and impartial, they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote or unnecessarily to impede its exercise, if they do, they must be declared void."

That such statement is good law will undoubtedly be uniformly conceded by all counsel in this case, but there certainly is grave doubt as to whether this statute is reasonable and uniform and whether it does not abridge the constitutional right of plaintiff to vote. In considering the effect of the equal protection clause of the Fourteenth Amendment, this Court has held that while the states retain the power of classification, yet such classification cannot be made arbitrarily. *Gulf, Colorado & Sante Fe R. R.* v. *Ellis*, 165 U. S. 150, 155.

This Court and the courts of many states have from time to time voided laws which established arbitrary classification. A very lengthy list of such laws is reviewed in the *Gulf* case (*supra*). But what is even more significant in that case is the language of Mr. Justice Brewer in discussing and defining arbitrary classification. The language might very well have been a part of the opinion in this very case. The Legislature of the State of Texas had passed a statute whereby railroad corporations as distinguished from other corporations, might in certain actions against them, be subjected to the payment of the plaintiff's attorney's fees, and the Court held that the statute in so far as it singled out railroad corporations was a discrimination against them and deprived them of the equal protection of the law. The Court stated:

> "The state may not say that all white men shall be subjected to the payment of attorney's fees of parties successfully suing them and all black men not. *It may*

> *not say that all men beyond a certain age shall be alone thus subjected,* or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification." (Italics ours.)

Yet this classification is exactly the one that the State of Georgia is here attempting to justify. Under the specific terms of Section 92-108 of the Acts of 1927, if you are under sixty you pay, and if you are over sixty you cast your ballot without paying.

It is respectfully contended that this is an arbitrary classification, which imposes a discriminatory burden upon the male electorate between 21 and 60. There would, undoubtedly, seem to be no rational basis for any such discrimination. Men beyond sixty are no better or no less fitted to exercise the right of suffrage because of their age. Certainly if anything, men between fifty and sixty are in their prime. They have reached a maturity which has been mellowed by the wisdom of middle age. To impose upon this portion of the electorate a burden not imposed upon those beyond sixty is totally without a rational basis. It was undoubtedly the very thing that Mr. Justice Brewer had in mind in using the language he did. (The *Gulf* case, *supra.*)

No less an arbitrary distinction is that drawn between men and women. While counsel have located no case in which this court has considered such a distinction, the question has nevertheless arisen. In *Morgan* v. *The State,* 179 Ind. 300, a criminal statute of the State of Indiana provided a different method of procedure in connection with insanity pleas of males and females. The appellant was a male found to have been responsible for a murder, but also found temporarily insane and as a result thereof, was committed to the Indiana State Hospital for the Insane. Counsel there contended that in so far as the Indiana statute distinguished between men and women, his client was being deprived of the equal protection guaranteed by the Fourteenth Amend-

ment of the Constitution of the United States. The Court upheld counsel's contention stating:

> "* * * the equal protection guaranteed by the Constitution, forbids the Legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated."

The Act in question read in conjunction with the decision of the Georgia Supreme Court in *Hawthorne* v. *Turkey Creek School District* (*supra*) and by the very language of the statute itself, imposes an arbitrary discrimination between men and women and in so doing it deprives the plaintiff of the equal protection of the laws.

The third arbitrary classification is that imposing a tax upon the right to vote. Counsel is not unaware of the historic development of suffrage in the United States and of the previous decisions of this court that the states have power to impose reasonable limitations upon the exercise of the franchise. It is a privilege rather than a right. A possession of property or the payment of a tax has often been made a qualification for voting. Yet this court has never considered the validity of a tax on property prerequisite to the exercise of the franchise under the equal protection clause. Moreover the decisions in *Minor* v. *Happersett,* 21 Wall. 162, and *McPherson* v. *Blacker,* 146 U. S. 1 decided more than half a century ago are not squarely in point. Since they involved state limitations upon the right to vote entirely different than those now before the court for its consideration. In this age, where illiteracy is fast disappearing throughout the country, where most men keep apace of current events, where the tax burden falls on all alike, where the entire trend is toward democracy and toward increasing the rights of the average citizen and giving him opportunity to participate in his government, it would be peculiarly appropriate for this court to reconsider the entire question.

There is certainly very little correlation between the ability of a man to vote and his ability to pay a poll tax. Many of the world's great thinkers would have undoubtedly been deprived of the right of franchise under this Georgia statute. Certainly the great literary figures of times past, who were properly, by mental equipment, most qualified to exercise the right of suffrage, would have been precluded from voting in Georgia.

And it is respectfully submitted that today any statute which qualifies a man for voting on the basis of his ability to pay a fixed sum of money, is not within keeping of the times.

It is significant that this statute restricts the electorate of Georgia to 8% of the population, while in other states not having a poll tax statute with a franchise deprivation clause for the average electorate is in excess of thirty percent.*

The appellant here respectfully submits that he is entitled to vote and that any act which bars him from voting on the basis of his sex, on the basis of his age, or on the basis of his tax-paying ability, is arbitrary classification which deprives him of the equal protection of the laws afforded him by the Fourteenth Amendment of the Constitution of the United States.

POINT IV.

The imposition of a poll tax as a prerequisite to voting in the state of Georgia, is a denial of a privilege or immunity of a citizen of the United States within the meaning of the Fourteenth Amendment.

The Fourteenth Amendment provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

---

* See appendix 1.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * *."

In his petition to the Superior Court of Fulton County, the appellant alleges without contradiction that on the 16th day of March, 1936, he attempted to register in order to vote for various federal officials, i. e., President and Congressman (see record page 1) and the sole ground of denial of such right was his inability to take an oath that he had paid all poll taxes agreeable to the Statute (record page 16). There is thus raised squarely the issue, does the poll tax statute of Georgia in so-far as it denies to a citizen of Georgia the right to participate in a national election, abridge his privileges as a citizen of the United States.

Counsel for the appellant in raising this issue, is not unmindful of the previous decisions of this Court in *McPherson* v. *Blacker,* 146 U. S. 1 and *Minor* v. *Happersett,* 21 Wall. 162, but it is submitted that these cases decided a half century ago, require a re-examination. The nature and essential character of the national government has undergone tremendous change in the fifty-year period which has intervened since the decision of this Court in those cases.

The national government has today extended its directing scope in a multitude of new fields. At the time of the decisions in question federal regulation of labor conditions, social security and relief of agriculture were unheard of. The taxation of citizens by the Federal Government to meet these burdens was unknown. While at the beginning of the century the functions of the government were limited and few—today the entire trend has been reversed and the participation of the citizens of a state in the democratic process by which those selected to manage the present day federal government are selected has become a most important "privilege",—Only by true democratic government and the participation of a citizen in the election of his Congressmen and President can true national democratic government survive.

This Court has heretofore held that:

> "The privileges and immunities of citizens of the United States as distinguished from the privileges and immunities of citizens of the states, are indeed protected by it; but those are privileges and immunities arising out of the natural and essential character of the national government and granted or secured by the Constitution of the United States". *In Re Kemmler,* 136 U. S. 436 at 448.

That the federal government has the right to interfere in questions involving the state conduct of elections when the election of members of the house is at issue is today not within the realm of debate. In *Ex Parte Yarbrough,* 110 U. S. 651, this court interfered in the conduct of a Georgia election in order to protect the right of certain colored citizens to vote. Similarly, it has declared invalid and unconstitutional clauses contained within a state constitution which abridged the right of a negro in Oklahoma to cast his ballot. *Guinn* v. *United States,* 238 U. S. 347. See also *Nixon* v. *Herndon,* 273 U. S. 536.

This court has also, on occasion, interfered to prevent corrupt practices in state elections. *Newberry* v. *United States,* 256 U. S. 232. That the court has this power, has been recently affirmed in the case of *Colgate* v. *Harvey,* 296 U. S. 404, where the court held that, "while the Fourteenth Amendment did not create a national citizenship, it has the effect of making that citizenship 'permanent and dominant' instead of 'deprivative and dependent' " upon state citizenship. The privilege of voting for members of Congress and Presidential electors is one which arises by virtue of national citizenship and no state today may properly enact a statute which discriminates against its citizens on the basis of a poll tax or on the basis of an age disqualification or on the basis of sex. These rights are all within the rights which the Fourteenth Amendment was meant to protect.

Wherefore it is respectfully submitted that the Appellant was entitled to register in order to vote for President and member of Congress and that the Supreme Court of Georgia erred in denying him such rights.

POINT V.

The judgment of the Supreme Court of Georgia should be reversed.

Respectfully submitted,

ARTHUR GARFIELD HAYS,
IRA HARRELSON,
HENRY G. VAN VEEN,
DAPHNE ROBERT,
Counsel for Appellant.

APPENDIX I.

The population and voting population of the United States. Percentages indicate the effect of poll tax on the exercise of the voting franchise.

State	*1930 Pop.*	*1932 Votes Polled*	*%*
Alabama	2,646,248	245,034	9.3
Arizona	435,573	118,251	27.1
Arkansas	1,854,482	220,562	11.9
California	5,677,251	2,266,845	39.9
Colorado	1,035,791	457,696	44.2
Connecticut	1,606,903	594,183	36.8
Delaware	238,380	112,902	47.3
Florida	1,468,211	276,252	19.0
Georgia	2,908,506	255,590	8.8
Idaho	445,032	186,520	41.9
Illinois	7,630,654	3,407,926	44.1
Indiana	3,238,503	1,575,282	48.6
Iowa	2,470,939	1,036,688	41.9
Kansas	1,880,999	791,978	42.1
Kentucky	2,614,589	983,063	37.8
Louisiana	2,101,593	268,271	12.8
Maine	797,423	298,444	37.4
Maryland	1,631,526	510,054	31.2
Massachusetts	4,249,614	1,580,043	37.1
Michigan	4,842,325	1,664,628	34.3
Minnesota	2,563,953	1,002,843	39.1
Mississippi	2,009,821	146,034	7.3
Missouri	3,629,367	1,609,894	44.3
Montana	537,606	216,479	40.3
Nebraska	1,377,963	570,135	41.4
Nevada	91,058	41,430	45.4
New Hampshire	465,293	205,520	44.2
New Jersey	4,041,334	1,630,063	43.4
New Mexico	423,317	151,606	35.3
New York	12,588,066	4,688,614	37.2
North Carolina	3,170,276	711,401	22.4
North Dakota	680,845	256,290	37.6
Ohio	6,646,697	2,610,088	39.2

State	1930 Pop.	1932 Votes Polled	%
Oklahoma	2,396,040	704,633	29.4
Oregon	953,786	368,751	38.6
Pennsylvania	9,631,350	2,858,968	29.7
Rhode Island	687,497	266,170	38.7
South Carolina	1,738,765	104,407	6.0
South Dakota	692,849	288,438	41.6
Tennessee	2,616,556	390,638	14.9
Texas	5,824,715	863,392	14.8
Utah	507,847	206,679	40.0
Vermont	359,611	136,978	38.0
Virginia	2,421,851	297,942	12.3
Washington	1,563,396	614,814	42.5
West Virginia	1,729,205	743,774	43.1
Wisconsin	2,939,006	1,114,808	37.8
Wyoming	225,565	96,962	42.9

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 4 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 9

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, TAX COLLECTOR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

MOTION TO DISMISS OR AFFIRM.

CHAS. B. SHELTON,
RALPH H. PHARR,
W. S. NORTHCUTT,
Counsel for Appellee.

INDEX.

Subject Index.

	Page
Motion to dismiss or affirm	1

Table of Cases Cited.

Breedlove v. *Suttles, Tax Collector,* Southeastern Reporter, Advance Sheets of December 10, 1936	3
Seaboard Air Line Railway Co. v. *Watson,* 287 U. S. 86, 77 L. Ed. 180	4
Sugarman v. *United States,* 249 U. S. 182, 63 L. Ed. 550	3

Statutes Cited.

Rules of the Supreme Court of the United States, Rule 9, 286 U. S. 599, 76 L. Ed. 1310	3
Rules of the Supreme Court of the United States, Rule 12, subparagraph (c), 286 U. S. 602, 76 L. Ed. 1312	2
Rules of the Supreme Court of the United States, Rule 12, subparagraph 1, adopted March 2, 1936, effective on or after July 1, 1936, 297 U. S. 734, 80 L. Ed. 1415	2, 3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 777

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, TAX COLLECTOR,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

APPELLEE'S MOTION TO DISMISS OR AFFIRM.

Now comes T. Earl Suttles, as Tax Collector of Fulton County, Georgia, the appellee in the above and foregoing appeal, and respectfully submits this motion to dismiss the appeal sought to be taken by Nolen R. Breedlove, as appellant, to the judgment of the Supreme Court of Georgia in the above entitled case, and in opposition to the noting of jurisdiction of the appeal, reserving his right to make subsequent motion to dismiss upon other grounds as provided by the Rules of this Honorable Court, and respectfully moves to dismiss the appeal and affirm the judgment of the

Supreme Court of Georgia sought to be reviewed upon each of the following grounds:

I.

Because the jurisdictional statement purporting to disclose the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in question does not disclose the date of the judgment or decree sought to be reviewed and the date upon which the application for appeal is presented, as required by subparagraph (c) of paragraph one of Rule 12 of the Rules of the Supreme Court of the United States as amended, 286 U. S. page 602, 76 L. Ed. page 1312.

II.

Because the jurisdictional statement purporting to disclose the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in question does not contain "pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears, * * * as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction" on this Honorable Court as required by amendment to subparagraph 1 of Rule 12 of the Rules of the Supreme Court of the United States adopted March 2, 1936, effective on or after July 1, 1936, 297 U. S. page 734, 80 L. Ed. 1415.

III.

Because the jurisdictional statement purporting to disclose the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to

review the judgment or decree in question does not include "a copy of the opinions delivered upon the rendering of the judgment or decree sought to be reviewed" (although appellant's statement discloses that said opinion covers all or parts of four pages of the Southeastern Reporter Advance Sheet of December 10, 1936; see page 2, appellant's jurisdictional statement), as required by the amendment to subparagraph 1 of rule 12 of the Rules of the Supreme Court of the United States adopted March 2, 1936, effective on or after July 1, 1936, 297 U. S. page 734, 80 L. Ed. 1415.

IV.

Because the appellant did not file with the clerk of the court below, with his petition for appeal, an assignment of errors which sets out separately and particularly each error asserted, and no such assignment of errors accompanies the petition, as required by Rule 9 of the revised Rules of the Supreme Court of the United States as amended (286 U. S., page 599, 76 L. Ed. page 1310).

In connection with this ground of the motion to dismiss, appellee respectfully submits that none of the alleged assignments of error incorporated by plaintiff point out or disclose any reason why it is alleged that the errors claimed to have been committed by the Supreme Court of Georgia deprive appellant of any constitutional right.

"Mere reference to a provision of the Federal Constitution, or the mere assertion of a claim under it, does not suffice." *Sugarman,* Plaintiff in Error, v. *United States of America,* 249 U. S. 182, 63 L. Ed. 550.

Neither the first nor the second alleged assignments of error incorporated by the appellant contain any semblance of an effort to assign error of any kind. Neither the third, fourth, fifth and sixth assignments of error point out

wherein the constitutional rights of appellant are alleged to have been violated in any particular. In each case there is a "mere reference to a provision of the Federal Constitution," or a "mere assertion of a claim under it" without any statement of any reason why any constitutional right sought to be invoked by the appellant is alleged to have been violated in any particular.

With respect to the seventh assignment of error incorporated by appellant, attention is called to the fact that appellant does not claim in this assignment to have been denied any right to vote at any election of any kind. The complaint sought to be asserted by appellant in the seventh assignment of error is at most a complaint with respect to the alleged unequal distribution of the tax burden and the alleged consequent effect thereof. This so-called assignment of error is substantially the same as the assignment of error held by the Supreme Court of the United States in the case of *Seaboard Air Line Railway Co.* v. *Watson,* 287 U. S. pages 86-92, 77 L. Ed. 180, to be "so lacking in particularity as to present no question for consideration."

V.

In his petition for appeal appellant asserts that appellee took no issue on any matter connected with said suit, except only the question as to the constitutionality of the constitutional provision challenged by appellant, and because appellant asserts also in his petition for appeal that the sole issue determined by the decision of the case was the constitutionality of the constitutional provision and laws referred to in the original petition, whereas the record discloses that the case was dismissed upon an oral motion to dismiss the petition which challenged the right of the petitoin to the relief sought upon any grounds whatsoever.

WHEREFORE, appellee prays that the appeal be dismissed, and that the judgment of the Supreme Court of the State of Georgia be affirmed.

CHAS. B. SHELTON.
RALPH H. PHARR.
W. S. NORTHCUTT.

Address:
504 First National Bank Bldg., Atlanta, Ga.

FILE COPY

Office - Supreme Court, U.S
FILED
OCT 5 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

[redacted].

No. 9, October Term, 1937.

NOLEN R. BREEDLOVE,

APPELLANT,

vs.

T. EARL SUTTLES, Tax Collector,

APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

APPELLEE'S MOTION TO DISMISS OR AFFIRM.

CHAS. B. SHELTON,
RALPH H. PHARR,
E. HAROLD SHEATS,
W. S. NORTHCUTT,
Attorneys at Law for Appellee.

504 First Nat'l Bank Bldg.,
Atlanta, Georgia.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

INDEX.

	Page
e's motion to dismiss or affirm	1–7
A—Certified documents in the case	9–28

SUPREME COURT OF THE UNITED STATES.

No. 777, October Term, 1936.
No. 9, October Term, 1937.

NOLEN R. BREEDLOVE,
APPELLANT,

vs.

T. EARL SUTTLES, Tax Collector,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

APPELLEE'S MOTION TO DISMISS OR AFFIRM.

Now comes T. Earl Suttles, as Tax Collector of Fulton County, Georgia, the appellee in the above and foregoing appeal, and respectfully submits this motion to dismiss the appeal sought to be taken by Nolen R. Breedlove, as appellant, to the judgment of the Supreme Court of Georgia in the above-entitled case, and respectfully presents this, his motion to dismiss the appeal, and to affirm

the judgment of the Supreme Court of Georgia sought to be reviewed upon each of the following grounds:

I.

Because the petition as amended does not raise a substantial federal question.

II.

Because none of the assignments of error are sufficient to raise any substantial federal question.

III.

In connection with grounds one (1) and two (2) of this motion, appellee respectfully calls the attention of the Court to the fact that it does not appear from the petition that any right secured to petitioner under any clause of the Constitution of the United States is directly challenged. It appears rather from the petition as amended that the gist of plaintiff's complaint is that the payment of accumulated past-due poll taxes, together with penalties and interest thereon, which have accrued from year to year, resulted indirectly, in his case, in an alleged unlawful limitation upon his alleged right to vote. The petition alleges that appellant had been at the time of filing the petition subject to poll taxes as a citizen of Georgia for a period of not less than seven (7) years; that he had never paid any poll taxes, and that by reason of his default from year to year the Registrar of Fulton County refused to register him as a voter unless he paid the poll taxes which had accumulated against him for previous years, including penalties and interest. It further appears from the petition as amended and from the provisions of the Constitution and laws of Georgia cited therein that the

same amount of taxes, penalties and interest would have accrued under similar circumstances against any other tax defaulter, and that all persons similarly situated who had not paid the poll taxes required of them by law would have been disqualified to register for voting without the payment of the same amount of past-due poll taxes, the same penalties and interest at the same rate as was charged in the case of petitioner.

IV.

Because appellant was on March 22, 1937, found guilty in the Superior Court of Fulton County, Georgia, a court having general criminal jurisdiction in said county of the offense of forgery; he having on said date been convicted by a jury in said court upon four (4) counts of a certain indictment returned by the grand jury of said county charging appellant with said offense, and on said date sentenced by the Hon. Paul S. Etheridge, Judge of said court, then and there presiding, for a term of not less than two (2) years nor more than three (3) years in the penitentiary.

V.

That said offense of forgery for which appellant was convicted on said date was and is a crime involving moral turpitude punishable by the laws of Georgia with imprisonment in the penitentiary.

VI.

That Article II, Section II of the Constitution of the State of Georgia, which provides for the disenfranchisement of certain classes of electors, provides that "those who shall have been convicted in any court of competent

jurisdiction of treason against the state, of embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of this state with imprisonment in the penitentiary, unless such persons shall have been pardoned," shall not be permitted to register, vote or hold any office, or appointment of honor, or trust, in this state.

VII.

That appellant has never been pardoned of said offense for which he was so convicted.

VIII.

A copy of said indictment, verdict and sentence, together with the motion for new trial and amended motion, and the order overruling said motion for new trial, and also the order of Hon. Paul S. Etheridge, the Judge of the Superior Court of the Atlanta Circuit in said case presiding, directing that said motion for new trial shall not serve as a supersedeas, all duly authenticated and properly certified according to the Act of Congress in such cases made and provided, is hereto attached, marked "Exhibit A," and made a part of this motion.

IX.

That appellant in this case, Nolen R. Breedlove, is the same individual indicted and convicted under the name of "M. R. Breedlove" in said criminal proceeding, and the same individual as the defendant so described in certified documents hereto attached, marked "Exhibit A."

X.

That Nolen R. Breedlove, the appellant in this case, is the same individual as "N. R. Breedlove," who likewise appears as the defendant in said criminal proceedings and is so designated in the motion for new trial and the amended motion therein, and who signed his name to the consent order in said case dated April 27, 1937, directing that said motion should not operate as a supersedeas, all of which proceedings are particularly described in Exhibit A hereto attached.

XI.

That by reason of the facts described in this motion the writ of mandamus, if it should be granted herein as prayed in the case at bar, would be unavailing and useless by reason of events occurring subsequent to the commencement of the proceedings.

XII.

That by reason of the facts alleged in this motion the conduct of appellant herein, who is an applicant for the writ of mandamus, has not been of such a nature as to render it equitable to grant the writ, if applicant were otherwise entitled thereto, and appellant does not now prosecute this appeal with clean hands.

XIII.

That the time for filing an appeal from said order denying said motion for new trial in said criminal case expired twenty days from the date of said order, which twenty days limit had expired on or before July 5, 1937.

XIV.

That appellant in this case, who is the same individual as "N. R. Breedlove" and the same individual designated as "M. R. Breedlove" in a portion of the record in said criminal case, never prosecuted any appeal from said judgment and order denying a motion for new trial in said criminal proceeding.

XV.

That said order denying a motion for new trial was and is a final judgment in said criminal proceeding.

XVI.

That the final judgment in said criminal proceeding was not rendered until after the time prescribed by Rule 12, Par. 3, of the Revised Rules of the Supreme Court of the United States had expired.

Wherefore, appellee prays:

(a) That this appeal be dismissed.

(b) That the judgment of the Supreme Court of Georgia, from which this appeal was taken, be affirmed.

(c) That appellant be required to file a response to this motion or to make discovery under oath regarding the facts disclosed herein with respect to said criminal proceeding or that a commission issue to take depositions

with respect thereto or that such other order be passed in the premises as the Court may direct.

(d) For such other and further relief as the Court may deem proper.

CHAS. B. SHELTON,
RALPH H. PHARR,
E. HAROLD SHEATS,
W. S. NORTHCUTT,
Attorneys at Law for Appellee.

504 First Nat'l Bank Bldg.,
Atlanta, Georgia.

Georgia, Fulton County:

Personally appeared T. Earl Suttles, who, on oath, first being duly sworn, deposes and says that he is the Tax Collector of Fulton County, the appellee in the above and foregoing case; that he has carefully investigated the truth of the facts set forth in the above and foregoing motion, and that the facts set forth in the above and foregoing motion to dismiss and to affirm the judgment of the Supreme Court of Georgia are true.

T. Earl Suttles.

Sworn to and subscribed before me this the 1st day of October, 1937.

Readie P. Ashurst,
Notary Public, Georgia.

(Seal) Notary Public, State at Large, Atlanta, Ga.

My commission expires Sept. 3, 1939.

EXHIBIT A.

SENTENCE:

Charge Felony (Fict Cks)

(Seal) Fulton Superior Court

Mch Term, 1937

No. 46964

The State
vs.
M. R. Breedlove } Verdict of Guilty to Ct. #1

Whereupon, It is ordered and adjudged by the Court that the Defendant, M. R. Breedlove be taken from the Bar of this Court to the jail of Fulton County, and be there safely kept until a sufficient guard is sent for him from the Georgia Penitentiary, and be then delivered to, and be by said guard taken to said Penitentiary, or to such other place as the Governor may direct, where he, the said M. R. Breedlove be confined at hard labor for the full term of not less than Two (2) years, and not more than Three (3) years, to be computed as provided in the Act approved August 27, 1931.

By the Court 3/22 1937

Paul S. Etheridge
Judge S. C. A. C. Presiding.

John A. Boykin
Solicitor General.

Georgia, Fulton County:

I, the undersigned, Deputy Clerk of the Superior Court, in and for said County, do hereby certify that the above

is a true and complete copy of the sentence and judgment of the Court in the case of State vs. ..... convicted of.....as appears of record and from the minutes of said Court.

Given under my official signature and the seal of said Court, This.....day of.....193...

.....Deputy C. S. C.

I certify that under the above sentence the term should be computed from.....193...

.....
Deputy Clerk, Fulton Superior Court.

SENTENCE:

Charge Felony (Fict. Cks.)

(Seal) Fulton Superior Court

Mch. Term, 1937

No. 46964

The State
vs.
M. R. Breedlove } Verdict of Guilty Ct. #2.

Whereupon, It is ordered and adjudged by the Court that the Defendant, M. R. Breedlove be taken from the Bar of this Court to the jail of Fulton County, and be there safely kept until a sufficient guard is sent for him from the Georgia Penitentiary, and be then delivered to, and be by said guard taken to said Penitentiary, or to such other place as the Governor may direct, where he, the said M. R. Breedlove be confined at hard labor for the full

term of not less than Two (2) years, and not more than Three (3) years, to be computed as provided in the Act approved August 27, 1931. The above sentence to run concurrently with sentence in case No 46964 Ct #1.

By the Court /3/22 1937

Paul S. Etheridge
Judge S. C. A. C. Presiding.

John A. Boykin
Solicitor General.

Georgia, Fulton County:

I, the undersigned, Deputy Clerk of the Superior Court, in and for said County, do hereby certify that the above is a true and complete copy of the sentence and judgment of the Court in the case of State vs..... convicted of.....as appears of record and from the minutes of said Court.

Given under my official signature and the seal of said Court, This.....day of.....193...

.....Deputy C. S. C.

I certify that under the above sentence the term should be computed from.....193...

.....
Deputy Clerk, Fulton Superior Court.

SENTENCE:

Charges Felony Fict Cks.

(Seal) Fulton Superior Court

Mch Term, 1937

No. 46964

The State
vs.
M. R. Breedlove } Verdict of Guilty to Ct. #3

Whereupon, It is ordered and adjudged by the Court that the Defendant, M. R. Breedlove be taken from the Bar of this Court to the jail of Fulton County, and be there safely kept until a sufficient guard is sent for him from the Georgia Penitentiary, and be then delivered to, and be by said guard taken to said Penitentiary, or to such other place as the Governor may direct, where he, the said M. R. Breedlove be confined at hard labor for the full term of not less than Two (2) years, and not more than Three (3) years, to be computed as provided in the Act approved August 27, 1931. The Above Sentence to Follow Sentence in Case No 46964 Ct #1

By the Court 3/22 1937

Paul S. Etheridge
Judge S. C. A. C. Presiding.

John A. Boykin
Solicitor General.

Georgia, Fulton County:

I, the undersigned, Deputy Clerk of the Superior Court, in and for said County, do hereby certify that the above is a true and complete copy of the sentence and judgment of the Court in the case of State vs. .....

convicted of.....as appears of record and from the minutes of said Court.

Given under my official signature and the seal of said Court, This.....day of.....193...

.....Deputy C. S. C.

I certify that under the above sentence the term should be computed from.....193...

.....
Deputy Clerk, Fulton Superior Court.

SENTENCE:

Charge Felony (fict Cks.)

(Seal) Fulton Superior Court
Mch Term, 1937
No. 46964

The State
vs.
M. R. Breedlove } Verdict of Guilty to Ct #4

Whereupon, It is ordered and adjudged by the Court that the Defendant, M. R. Breedlove be taken from the Bar of this Court to the jail of Fulton County, and be there safely kept until a sufficient guard is sent for him from the Georgia Penitentiary, and be then delivered to, and be by said guard taken to said Penitentiary, or to such other place as the Governor may direct, where he, the said M. R. Breedlove be confined at hard labor for the full term

of not less than Two (2) years, and not more than Three (3) years, to be computed as provided in the Act approved August 27, 1931. The above sentence to run concurrently with sentence in case No 46964 Ct #3.

By the Court 3/22 1937

Paul S. Etheridge
Judge S. C. A. C. Presiding.

John A. Boykin
Solicitor General.

Georgia, Fulton County:

I, the undersigned, Deputy Clerk of the Superior Court, in and for said County, do hereby certify that the above is a true and complete copy of the sentence and judgment of the Court in the case of State vs. .....
convicted of.....as appears of record and from the minutes of said Court.

Given under my official signature and the seal of said Court, This.....day of.....193...

.....Deputy C. S. C.

I certify that under the above sentence the term should be computed from.....193...

.....
Deputy Clerk, Fulton Superior Court.

State of Georgia, County of Fulton

In the Superior Court of Said County.

The Grand Jurors selected, chosen and sworn for the County of Fulton, to-wit:

1 Lewis C. Gregg, Foreman, Foreman.

2	P. L. Bardin	13	S. H. McGuire
3	Nelson Crist	14	B. F. Willis
4	George F. Eubanks	15	L. F. Green
5	F. R. Jones	16	R. C. Darby
6	J. D. Burnett	17	J. Russell Porter
7	H. H. Fields	18	~~William Akers~~
8	Archibald Gann	19	E. C. Findley
9	J. C. Phillips	20	Charles A. Clayton
10	W. S. Bailey	21	~~Paul Seydell~~
11	W. Hal Barker	22	J. P. Allen
12	L. H. Palmer	23	J. H. Manning

in the name and behalf of the citizens of Georgia, charge and accuse

M. R. Breedlove

with the offense of—

Felony

for that the said accused, in the County of Fulton and State of Georgia, on the

9th day of February, 1937

with force and arms did designedly, by color of a check endorsed in the counterfeit and fictitious name of D. W. Slater, Mgr. & President, said chack being in form and substance as follows:

"First National Bank 64-1
Main Office

Atlanta, Ga., Feb 8th 1937 No.....

Pay to the order of Atlanta Advertising & Pub. Co.
$5.00 Five and.....00/100 Dollars
For advertising Police Report W. M. Mabson
Frances Hotel"

obtain of and from J. S. Sparts, five dollars in money of the value of $5.00 all of which was done with intent to defraud The First National Bank of Atlanta, W. M. Mabson and J. S. Sparts; and all said acts of accused were and are, contrary to the laws of said State, the good order, peace and dignity thereof.

Count Two

And the Grand Jurors aforesaid, on their oaths aforesaid, charge and accuse M. R. Breedlove, with the offense of Felony, for that said accused, in the County of Fulton, State of Georgia, on the 17th day of February, 1937, with force and arms, did designedly, by color of a check endorsed in the counterfeit and fictitious name of Franklin L. Boyd, said check being in form and substance as follows:

"The George W. Tumlin Co. No. 7399

Atlanta, Ga. 2/17 1937

Pay to the order of Mr. Franklin L. Boyd $5.00
Five & no/100.....Dollars
To First National Bank
Main Office 64-1
Atlanta, Ga. The George W. Tumlin Co.
By C. C. Johnston
Secy. & Treas"

obtain of and from J. S. Sparks, five dollars in money of the value of $5.00 all of which was done with intent to defraud The First National Bank of Atlanta, The George W. Tumlin Company and J. S. Sparts; and all said acts of accused were and are, contrary to the laws of said State, the good order, peace and dignity thereof.

Count Three

And the Grand Jurors aforesaid, on their oaths aforesaid, charge and accuse M. R. Breedlove, with the offense of Forgery, for that said accused, in the County of Fulton, State of Georgia, on the 22nd day of January, 1936, with force and arms, did wrongfully, falsely and fraudulently make, sign and forge the name of A. J. Hartley, on and to a certain receipt and writing, which was in form and substance as follows,—

"The Georgia Justice News
Display Advertising Órder

Date Jan 22 1936

Name of Firm Fisher Torres Cafe
Address Peachtree St.
Authorized by Mr. Torries
Position Mgr.
Date of Insertion Jan Consecutive Issues to Run one
Inches 1 Columns 2 Total Inches 3
Cuts. none Solicitor M. R. Breedlove
Rate per Insertion $5.00

(Paste Copy Here)

After this adition ad to run untill date of convention wich will be March 22-1937.

Signed Judge
A. J. Hartley
President & orginizer

said signing as aforesaid of the name of A. J. Hartley to said receipt and writing being done without legal warrant or authority and with intent to defraud Fischer-Torres Cafe, Inc. and A. J. Hartley, contrary to the laws of said State, the good order, peace and dignity thereof.

Count Four

And the Grand Jurors aforesaid, on their oaths aforesaid, charge and accuse M. R. Breedlove, with the offense of Forgery, for that said accused, in the County of Fulton, State of Georgia, on the 20th day of February, 1937, with force and arms, did wrongfully, falsely and fraudulently make, sign and forge the name of A. J. Hartley, on and to a certain letter and writing, which was in form and substance as follows,—

"The Georgia Justice News
Official Publication of
The Georgia Justice and Constables Association
'Circulatilon in 159 Counties of Georgia'
419 Palmer Building
Atlanta, Ga.

Feb 20. 1937

National Paper Co.
334 Simpson St.
City.

Mr. Wellhouse.

Sir in refurence to your conversation, with Mr. Boyd. I am very sorry, there was some misunder standment, There I deem it a pleasure to come to the point, and try in to straighten it out, in regards to how to make out your check for your display ad in the Atlanta Police and Constables report Book, You may make it to the Ga. Justice And Constables Asso-

ciation. Of which I am Chairman and Organizer, Or The Police Dept. either will do, inclosed you will find a copy of your ad. we hope to here from you at your earlyest moment, thanking you for your corpration and all consideration.

Please address us at the above address.

Cordially,

A. J. Hartley

REL:CS Judge A. J. Hartley

said signing as aforesaid of the name of A. J. Hartley to said letter and writing, being done without legal warrant or authority and with intent to defraud the National Paper Company and A. J. Hartley, contrary to the laws of said State, the good order, peace and dignity thereof.

John A. Boykin, Solicitor General.

Special Presentment

cs

w-ar

Recorder

Clerk's No. 46964

Witnesses:
W. M. Mabson,
% Frances Hotel,
corner P'tree & Ivy Sts.
C. C. Johnston,
% Geo. W. Tumlin Co.
Soda Fount
1st Floor Hurt Bldg
J. S. Sparts,
% United Cigar Store
33 P'tree St N W
Mr. Wellhouse,
% Nat'l Paper Co.
334 Simpson St N W
A. J. Hartley,
419 Palmer Bldg.
Officers H. T. Brown
W. F. White
Mr. Clarence Torres,
% Fischer-Torres Co.
588 P'tree St

Fulton Superior Court

The State
vs.
M. R. Breedlove

Felony
(4 Counts)

True Bill
5th day of March 1937
Lewis C. Gregg, Foreman

M. R. Breedlove
waives copy of indictments, list of witnesses, full panel, formal arraignment, and pleads not guilty.
John A. Boykin Sol. Gen.
O. N. Singleton Deft's Atty.

1. We the jury find the defendant guilty as charged in count one, And sentence him from two to three years and recommend this count to be treated as a misdemeanor. This 22nd day of March, 1937.

Foreman Ernest Towns

2. We the jury find the defendant guilty as charged in Count Two and sentence him from two to three years and recommend this count to be treated as a misdemeanor. This 22nd day of March 1937.

Foreman Ernest Towns

3. We the jury find the defendant guilty as charged in count Three and sentence him from Two to three years and recommend this count to be treated as a misdemeanor. This 22nd day of March, 1937.

Foreman Ernest Towns

4. We the jury find the defendant guilty as charged in Count Four and sentence him from two to three years and recommend this count to be treated as a misdemeanor. This 22nd day of March, 1937.

Foreman Ernest Towns

The State
vs
N. R. Breedlove
} No 46964
Fulton Superior Court

Defendant in the above captioned case having been convicted and sentence imposed, and having made a motion for a new trial, which is still pending, and it having been made to appear to the Court through his counsel of record that it is the desire of defendant that said motion for new trial do not operate as a supersedeas, but that pending final disposition thereof defendant may be privileged to begin serving the sentence heretofore imposed upon him by the Court, upon motion of counsel for defendant,

It Is Considered, Ordered and Adjudged that the motion of defendant for new trial shall not operate as a supersedeas, and that the Sheriff is directed to surrender defendant to the Prison Commission of the State of Georgia in order that they may direct where he shall begin the service of the sentence imposed in this case.

This the 27 day of April, 1937.

Paul S. Etheridge
Judge S. C. A. C.

The foregoing agreed and consented to:

N. R. Breedlove
Defendant

O. N. Singleton
Attorney for Defendant

Sentence sent to Sheriff
4/27/37

MOTION FOR NEW TRIAL

The State vs. N. R. Breedlove	No. 46964 Fulton Superior Court Criminal Division

Verdict and Judgment for The State at March term, 1937, of Fulton Superior Court, on 22nd day of March 1937.

The defendant being dissatisfied with the verdict and judgment in said case, comes during said term of court, before the adjournment thereof, and within 30 days from said trial, and moves the court for a new trial, upon the following grounds, to-wit:

1st. Because the verdict is contrary to evidence and without evidence to support it.

2nd. Because the verdict is decidedly and strongly against the weight of the evidence.

3rd. Because the verdict is contrary to law and the principles of justice and equity.

4th, The court failed to exclude inadmissible evidence.

Whereupon defendant prays that these, four grounds for a new trial, be inquired of by the court, and that a new trial be granted.

O. N. Singleton
Attorney for Movant.

Order to Show Cause and Supersedeas.

The foregoing motion read and considered. Let the motion be filed, served upon Counsel for the plaintiff, and let the plaintiff show cause before me on the 17 day of April, 1937, why the motion should not be granted. Let this order act as a supersedeas until further order of Court.

In the meantime and until the final hearing of said Motion, whenever the same may be had, Movant is allowed to amend and perfect the motion, and to prepare, present for approval, and file the brief of evidence in said case.

This 24 day of March 1937.

Paul S. Etheridge
Judge

Due and Legal service of the within motion and order acknowledged, time, copy and all other and further service waived. This 24 day of Mar. 1937.

John A. Boykin Sol Genl.
Attorney for State.

Suit No. 46964

Motion for New Trial

The State
vs
N. R. Breedlove

Filed in office this 24 day of Mch 1937.

W. H. Spratlin Dep. Clerk.
O. N. Singleton
Attorney for Movant.

Motion No. Docket page 99
Minutes.....Page.....

The State
vs.
N. R. Breedlove
} No.
Fulton Superior Court

Now comes the defendant in the above stated case, and files this his amendment to his original motion for new trial and for grounds thereof shows the following:

1. That the Court erred in charging in the beginning that all counts came under the same law, whereupon the Judge charged Code Section 249 of the Penal Code of Georgia, after counsel for defendant had been advised in open Court by the Assistant Solicitor General that the indictments were returned and were being prosecuted under Code Sections 245 and 249 of the Penal Code; that the defendant was injured and damaged by said erroneous charge for that the letters which were allegedly forged and upon which are embraced in Counts three and four of said indictment were not used as an artifice and scheme for the purpose of defrauding, but were in adjustment of a previous dispute.

2. That the Court erred in failing to exclude the purported confession for that the testimony showed that said confession was not made voluntarily, but was made upon the promise of A. J. Hartley that it would be best for him to tell Hartley if he had been anywhere else transacting any other business.

Wherefore, Defendant prays that this his amended motion for new trial be allowed and ordered filed and that the Court do grant a new trial that the best interests of society may be met.

Ossie N. Singleton
Attorney for Defendant.

This amendment is hereby allowed, the grounds thereof are hereby approved.

June 14, 1937.

Paul S. Etheridge
Judge S. C. A. C.

This motion for new trial, as amended is hereby overruled and a new trial is denied.

June 14, 1937.

Paul S. Etheridge
Judge S. C. A. C.

Filed in office this the 14 day of June, 1937

W. H. Spratlin
D. C.

(Seal) Georgia,
Fulton County

I, J. W. Simmons, Clerk of the Superior Court of Fulton County, do hereby certify that I have compared the foregoing copy of Indictment, Plea, Jury verdicts, sentences, motion for new trial, amended motion for new trial, and orders of court thereon in case:

The State vs M. R. Breedlove, No 46964,
Superior Court of Fulton County.

with the original record thereof, now remaining in this office, and the same is a correct transcript therefrom, and of the whole of such original record, and that said Court is a Court of Record.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this the 29th day of Sept. 1937.

J. W. Simmons
(Seal) Clerk Superior Court of Fulton County,
Georgia.

Georgia, Fulton County—ss.

I, Virlyn B. Moore do certify that I am Judge of the Superior Court of Fulton County, Georgia, and that I am the Presiding Judge of said Court, and that the above attestation, subscribed by J. W. Simmons as Clerk of said Court, is sufficient and in due form of law, and that his signature thereto is genuine.

Witness my hand and official signature, this the 29th day of Sept. 1937.

Virlyn B. Moore
(Seal) Judge Superior Court, Fulton County, Georgia.

Georgia, Fulton County—ss.

I, J. W. Simmons, Clerk of the Superior Court in and for said County, hereby certify that the above attestation of Hon. Virlyn B. Moore Judge of the Superior Court of Fulton County, Georgia, is his genuine signature, and that he is Judge of said Court, and said certificate is in due form of law.

Given under my hand and seal of office this the 29th day of Sept. 1937.

J. W. Simmons
(Seal) Clerk Superior Court of Fulton County, Georgia.

FILE COPY

Office - Supreme Court, U. S
FILED
OCT 11 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

No. 777, October Term, 1936.
No. 9, October Term, 1937.

NOLEN R. BREEDLOVE,
APPELLANT,

vs.

T. EARL SUTTLES, Tax Collector,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF OF APPELLEE ON MOTION TO DISMISS.

CHAS. B. SHELTON,
RALPH H. PHARR,
E. HAROLD SHEATS,
W. S. NORTHCUTT,
Attorneys at Law for Appellee.

504 First Nat'l Bank Bldg.,
Atlanta, Georgia.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

INDEX.

	Page
Introduction	1
I. Where the writ of mandamus would be nugatory or unavailing, it should be denied	3
II. Conviction of a crime involving moral turpitude constitutionally disqualified one to vote in Georgia	3
III. Forgery is a crime involving moral turpitude	4
IV. An original motion to dismiss may be entertained for matter arising subsequently to the appeal where appropriate	5
Conclusion	6

Cases Cited.

Holloway v. Holloway, 126 Ga. 459, 460, 55 S. E. 191, 7 L. R. A. (N. S.) 272, 115 Am. St. Rep. 102, 7 Ann. Cas. 1164	4
Hughes v. State Board of Examiners, 162 Ga. 246, 255, 134 S. E. 42, 46	4
Johnston v. Riley, 13 Ga., p. 97, Opinion, page 131	4
Mills v. Green, 159 U. S. 651, 40 L. ed. 293	3
Richardson v. McChesney, 218 U. S. 487, 54 L. ed. 1121	3
Seaboard Air Line Railway Co. v. Watson, 267 U. S. 86, 77 L. ed. 180	2
Skrmetta v. Coykendall (D. C. U. S., Northern District Georgia), 16 F. (2d) 783	4
Smith, Treasurer, v. Hodgson et al., 129 Ga. 494 (2)	6
United States of America ex rel. John Munsill Ulrich v. Kellogg, Secretary of State, 58 App. D. C. 360, 30 F. (2d) 984, 71 A. L. R. 1210, writ of certiorari denied 279 U. S. 868, 73 L. ed. 1005, 49 S. Ct. 482, rehearing denied 73 L. ed. 1005, 50 S. Ct. 79	4
United States v. Fisher, 222 U. S. 204, 32 S. Ct. 37, 56 L. ed. 165	6

Miscellaneous Cited.

5 American & English Annotated Cases, p. 626	6
3 American Jurisprudence, Sec. 737, p. 314	5
Code (1882), Sec. 5033	4
Code (1896), Sec. 3736	4
Code (1911), Sec. 6404	4
Code (1933), Sec. 2-701	4
41 C. J., p. 212	4
4 C. J., Sec. 1362 (b), 1377 (3), p. 1971	5
38 C. J., Sec. 23, p. 551	3
38 C. J., Sec. 755, p. 951	5
Constitution of 1877, Art. II, Sec. 2	3
Michie's Code (1926), Sec. 6404	4
Park's Code (1914), Sec. 6404	4

SUPREME COURT OF THE UNITED STATES.

No. 777, October Term, 1936.
No. 9, October Term, 1937.

NOLEN R. BREEDLOVE,
APPELLANT,

vs.

T. EARL SUTTLES, Tax Collector,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF OF APPELLEE ON MOTION TO DISMISS.

Now comes T. Earl Suttles, in his capacity as Tax Collector of Fulton County, Georgia, the appellee in the above case, and respectfully files this his brief in support of motion to dismiss the appeal heretofore filed therein, and alleges:

Introduction.

The motion to affirm is based upon the ground that the questions upon which the decision of the cause depends are

so unsubstantial as to require no further argument. Rule 7, paragraph 4 of the Rules of this Honorable Court.

The motion to dismiss is based in part upon the ground that no substantial federal question is presented, and in part upon the ground that the question in controversy has become moot.

Want of a substanial federal question is cause for dismissal of an appeal to this Court.

> Seaboard Air Line Railway Co. v. Watson, 267 U. S. 86, 77 L. ed. 180.

In the main brief filed in this court, appellee has attempted to make a thorough analysis of the facts and of the law which is controlling on a consideration of this motion. Every question referred to by appellant or sought to be raised based upon the Constitution of the United States has been repeatedly decided adversely to appellant, with the possible exception of the question based upon an alleged right arising under the Nineteenth Amendment.

Decisions of this Court directly in point on all other clauses of the Federal Constitution are cited in the corresponding sections of the main brief.

Several well-considered state decisions and decisions of the Supreme Court of the United States upon similar clauses of the Constitution are cited as controlling on the issue of the Nineteenth Amendment in sections IX, XI and XII of the main brief.

An analysis of the constitutional attack based upon the Nineteenth Amendment is contained in division VIII of the main brief.

Only unusual questions raised in the motion to dismiss or to affirm will be given special consideration.

I.

"Where the writ of mandamus would be nugatory or unavailing it should be denied."

The above title of this section is taken from mandamus section 23, 38 C. J., page 551.

It is the general rule in election cases that where mandamus is sought for the purpose of enabling one to vote at an election, the relief will not be granted if the date of the election is passed.

Richardson v. McChesney, 218 U. S. 487, 54 L. ed. 1121;
Mills v. Green, 159 U. S. 651, 40 L. ed. 293.

If the facts set forth in the verified motion are true, even if mandamus should be granted, appellant would thereafter be disqualified to vote in any future election in Georgia, and the writ, if granted, would be unavailing.

II.

Conviction of a crime involving moral turpitude constitutionally disqualifies one to vote in Georgia.

The constitutional requirements of the present Constitution of 1877 regarding disfranchisement of voters by reason of conviction of crime involving moral turpitude and for other causes are embraced in Article II, Section 2 of the Constitution of 1877 as follows:

> "The General Assembly may provide, from time to time, for the registration of all electors, but the following classes of persons shall not be permitted to register, vote, or hold any office, or appointment of honor or trust in this State, to-wit:

"(1) Those who shall have been convicted, in any Court of competent jurisdiction, of treason against the State, of embezzlement of public funds, malfeasance in office, bribery, or larceny, or of any crime involving moral turpitude, punishable by the laws of this State with imprisonment in the penitentiary, unless such person shall have been pardoned;

"(2) Idiots and Insane Persons."

Code (1882), Section 5033;
Code (1896), Section 3736;
Code (1911), Section 6404;
Park's Code (1914), Section 6404;
Michie's Code (1926), Section 6404;
Code of 1933, Section 2-701.

III.

Forgery is a crime involving moral turpitude.

Johnston v. Riley, 13 Ga., p. 97, *opinion, page 131;*
United States of America ex rel. John Munsill Ulrich v. Kellogg, Secretary of State, 58 App. D. C. 360, 30 F. (2d) 984, 71 A. L. R. 1210, writ of certiorari denied 279 U. S. 868, 73 L. ed. 1005, 49 S. Ct. 482, rehearing denied 73 L. ed. 1005, 50 S. Ct. 79.

In the case cited, the convictions in question were: Larceny, three cases, and abetting a forgery, one case.

Skrmetta v. Coykendall (D. C. U. S., Northern District Georgia), 16 F. (2d) 783;
Hughes v. State Board of Examiners, 162 Ga. 246, 255, 134 S. E. 42, 46;
Holloway v. Holloway, 126 Ga. 459, 460, 55 S. E. 191, 7 L. R. A. (N. S.) 272, 115 Am. St. Rep. 102, 7 Ann. Cas. 1164;
See Definition of "Moral Turpitude," 41 C. J., p. 212.

IV.

An original motion to dismiss may be entertained for matter arising subsequently to the appeal where appropriate.

As set forth in the motion, the conviction disclosed by the certified documents attached did not become final until after jurisdiction had been conditionally noted in this court, reserving until the hearing a consideration of whether or not a substantial federal question was presented.

The prayer incorporated in the motion includes the relief authorized by Section 1 of Rule 15 of the Rules of this Honorable Court, although the Court has jurisdiction to require an appropriate response to this motion or discovery by the appellant which would probably make the issuance of a Commission unnecessary.

"Where the controversy is determined by an order in the same or another action or proceeding, the appeal may be dismissed."

Appeal and Error, Section 1362 (b), 4 C. J. S., p. 1971.

This rule is particularly applicable to mandamus proceedings, where events occurring subsequent to the appeal, even in a proper case, render the writ unavailing.

Mandamus, Section 755, 38 C. J., p. 951.

Where the facts which are material for consideration occurred subsequent to the appeal, evidence dehors the record may and should be received.

Appeal and Error, Sec. 1377 (3), 4 C. J. S., page 2000, and authorities cited, notes 92 and 93.

This rule is particularly appropriate to mandamus proceedings.

Appeal and Error, Section 737, 3 American Jurisprudence, page 314.

See exhaustive case note on the question, "Dismissal of Appeal in Mandamus Proceedings where question involved has become immaterial."

5 American & English Annotated Cases, page 626.

Conclusion.

"Mandamus is not a writ of right. It issues to remedy a wrong, not to promote one, and will not be granted in aid of those who do not come into court with clean hands."

United States v. Fisher, 222 U. S. 204, 32 S. Ct. 37, 56 L. ed. 165.

This is also the law of the State of Georgia.

Smith, Treasurer, v. Hodgson et al., 129 Ga. 494 (2).

Under the circumstances disclosed by this motion, appellee respectfully requests that this Honorable Court decline to accept jurisdiction in the case; that such order as the Court may deem appropriate be passed to discover the truth of any averment in the motion which may not be admitted by the appellant, and that the Court inquire into the matters disclosed by the motion before entering upon a hearing of the merits of the application.

Respectfully submitted,

CHARLES B. SHELTON,
504 First National Bank Bldg.,
RALPH H. PHARR,
504 First National Bank Bldg.,
E. HAROLD SHEATS,
219 Hurt Bldg.,
W. S. NORTHCUTT,
504 First National Bank Bldg.,
Attorneys for T. Earl Suttles in his capacity as Tax Collector of Fulton County, Georgia, Appellee.

Atlanta, Georgia.
October 2, 1937.

INDEX.

	Page
Statement of the case	1
Questions presented	3
Historical analysis of constitutional and statutory requirements for electors in Georgia, with regard to payment of taxes as a prerequisite to voting	5
Source of authority with respect to levy of poll taxes	7
Classifications prescribed from time to time with respect to liability for poll taxes	8
Brief of law and argument	13
I. The right to vote is not a right arising by virtue of the Constitution of the United States	14
II. All contentions based upon the preamble to the Constitution or upon the provisions of article I defining the powers of Congress, or of article VI, clause 2, defining the supreme law are without merit	25
III. Regulations prescribed by state authority defining the qualifications of voters in the state are not prohibited by the Privileges and Immunities clause of Article IV, Section 2, Paragraph 1 of the Constitution of the United States	27
IV. The Constitution and laws of Georgia do not deny to citizens of the United States residing in Georgia a republican form of government as defined in Article IV, Section 4 of the Constitution of the United States	29
V. No right guaranteed by the First Amendment or by the Fifteenth Amendment to the Constitution is withheld by the challenged laws	33
VI. The contentions of appellant based upon the Fourteenth Amendment to the Federal Constitution are without merit	35
VII. A consideration of the nature of poll taxes and of the right of the state to classify its citizens with respect to liability therefor	42
VIII. An analysis of the constitutional attack based upon the Nineteenth Amendment	50
IX. No constitutional restriction upon a state's power to tax will be inferred	54
X. Poll taxes in Georgia are constitutionally limited to educational purposes, and a classification placing primary responsibility therefor upon men is both reasonable and natural	56
XI. Contentions based upon the Nineteenth Amendment to the Federal Constitution are without merit	58
XII. Authority of the Massachusetts woman-juror case	62
XIII. The separate classification of citizens above the age of sixty years is not unlawful	65
Conclusion	66

Appendix.

Constitutional requirements of the various constitutions of the State of Georgia and laws passed by the General Assembly from time to time relating to the qualification of voters, the amount of poll taxes assessed, and classifications of citizens with respect to liability for poll tax 69

Pleadings material to a consideration of the issues presented..... 87

Assignments of error in the petition to the Supreme Court of Georgia for appeal to the Supreme Court of the United States..... 98

Statement of points to be relied on in the Supreme Court..... 99

Cases Cited.

Anderson v. Baker et al. (Supreme Court of Maryland, November 2, 1865), 23 Md. 531..... 23

Billings v. U. S., 232 U. S. 261, 58 L. ed. 596..... 26
Board of Education v. Purse, 101 Ga. 422, Opinion, page 428..... 57
Bradwell v. State, 83 U. S. (16 Wall.) 130, 138, 21 L. ed. 442, 445..28, 39
Butler v. Perry, 240 U. S. 328, 60 L. ed. 672, 36 S. Ct. 258, affirming 67 Florida 405, 66 So. 150.....35, 39, 60

City of Faribault v. Misnee, 20 Minn., p. 396..... 44
Commissioners of Ottawa County et al. v. Christian Nelson et al., 19 Kan. 234, 238, 241, 27 Am. Rep. 101.....45, 46
Commonwealth v. Welosky (Sup. Judicial Ct. of Mass., September 10, 1931), 276 Mass. 398, 177 N. E. 656 (certiorari denied 284 U. S. 684, 76 L. ed. 578, 52 S. Ct. 201)..... 63

Davidson v. New Orleans, 96 U. S. (6 Otto) 97, 105, 24 L. ed. 616, 620 26
Davis v. Ward, 155 Ga. 748, 118 S. E. 378.....53, 62

Ellenbecker v. Plymouth County, 134 U. S. 31, 34, 33 L. ed. 801, 803. 33
Evans v. McCave, 164 Tenn. 672, 52 S. W. (2d) 161..... 56
Ex parte Yarbrough, 110 U. S. 651, 28 L. ed. 274.....21, 34

Gogaur v. Timberlake et al. (Supreme Court of Indiana, Feb. 24, 1897), 148 Ind. 38, 46 N. E. 339, 62 Am. St. Rep. 487, 37 L. R. A. 644 36

Hill v. Roberts, 142 Tenn. 215, 217 S. W. 828.....55, 56
Hines et al. v. Mullins, Ordinary, 25 Ga. 696 (1), 697..... 57

In re Duncan (Texas, 1891), 139 U. S. 449, on p. 461, 11 S. Ct. 573, 35 L. ed. 219..... 31

Jacobson v. Massachusetts, 197 U. S. 11, 22, 49 L. ed. 643, 648..... 25

Karem v. United States (C. C. A. 6th Circuit), 121 F., p. 250..... 21
Kineen v. Wells et al., 144 Mass. 497, 11 N. E. 916, 59 Am. Rep. 105. 22
Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969..... 26

Lloyd v. Dollison, 194 U. S. 445, 447, 48 L. ed. 1062, 1065..... 33
Luther v. Borden et al., 48 U. S. (7 How.) 1, 12 L. ed. 581..... 31

McPherson v. Blacker, 146 U. S. 1, 36 L. ed. 869.....18, 19, 20
Michigan Central Railroad v. Powers, 201 U. S. 245, 50 L. Ed. 744.. 54
Miller v. Wilson, 236 U. S. 373, 35 S. Ct. 342, 59 L. ed. 628, L. R. A. 1915 F. 829..... 65

Minor v. Happersett, 88 U. S. (21 Wall.) 162, 22 L. ed. 627 ..... 15, 17, 18, 30, 36, 37, 52, 64, 65
Muller v. Oregon, 208 U. S. 412, 28 S. Ct. 324, 52 L. ed. 551, 13 Ann. Cas. 957 65
Munn v. Bowers (C. C. A. 2nd Circuit), 47 F. (2) 204, third division of opinion, p. 205, cert. denied by Supreme Court, 283 U. S. 845, 41 S. Ct. 492, 75 L. ed. 1454 26

Paul v. Virginia, 75 U. S. (8 Wall.) 168 (3), 180, 19 L. ed. 357, 360 28
Peacock v. Pratt (C. C. A. 9th Circuit, Feb. 9, 1903), 121 F. 772 26
Pohl v. Chicago, M. & St. Paul Rwy. Co. (1916), 52 Mont. 572, 160 P. 515 26
Pope v. Williams, 193 U. S. 621, 48 L. Ed. 817 36

Ratcliff v. Beale, 74 Miss. 247, 20 So. 865 40
Rawlins v. Georgia, 201 U. S. 638, 50 L. ed. 899, 26 S. Ct. 560 61
Riley v. Massachusetts, 232 U. S. 671, 34 S. Ct. 469, 58 L. ed. 788 65

Salt Lake City v. Wilson (decided April 2, 1915), 46 Utah 60, 148 Pac. 1104 ..... 47, 58
Sawyer v. City of Alton, 4 Ill. 127 45
Slaughter House Cases, 83 U. S. (16 Wall.) 36 (4), 77, 21 L. ed. 394, 409 29
South Carolina v. United States (Ct. Cl. 1905), 199 U. S. 454, 26 S. Ct. 110, 50 L. ed. 261, 4 Ann. Cas. 737 31
Stone v. Smith, 159 Mass. 413, 34 N. E. 521 23

Thompson v. Georgia Railway & Power Co., 163 Ga. 603 57
Thurston County v. Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634, 9 L. R. A. (N. S.) 306, 12 Ann. Cases 314 ..... 44, 46, 65, 66

United States v. Cruikshank et al., 92 U. S. (2 Otto) 542, 23 L. ed. 588 ..... 21, 34
United States v. Fisher, 222 U. S. 204, 32 S. Ct. 37, 56 L. ed. 165 67
United States v. Susan B. Anthony (Circuit Court N. Y., June 18, 1873), 11 Blatchf. (U. S.) 200, 24 Fed. Cas. No. 14,459 38

Vertrees v. State Board of Elections (decided July 26, 1919), 141 Tenn. 645, 214 S. W. 737 ..... 55, 58

Williamson v. McLain, 147 Tenn. 491, 249 S. W. 813 56
Williams v. Mississippi, 170 U. S. 213, 42 L. ed. 1012, 18 S. Ct. 583 ..... 40, 50, 60

Statutes Cited.

Code (1873), Secs. 809 (3), 5021, 5027 ..... 73, 74, 75, 76
Code (1882), Sec. 809 (3), 5183, 5032 ..... 75, 76, 77
Code (1895), Vol. I, Sec. 775, 766 ..... 76, 78
Code (1896), Vol. II, Secs. 5737, 5885 ..... 76, 77
Code (1911), Secs. 917, 1015, 6555, 6397 ..... 75, 76, 78, 80
Code (1933), Secs. 2-603, 2-5004, 2-6601; 2-8501, 53-501, 74-105, 92-108, 92-109, 92-5001, 92-6001 ..... 2, 3, 4, 7, 12, 27, 56, 57, 75, 76, 77, 85, 86
Code of 1933, Section 2-8501 27
Constitution of State of Georgia of 1789 ..... 5, 69
Constitution of State of Georgia of 1798 5
Constitution of State of Georgia of 1861 ..... 6, 72
Constitution of State of Georgia of 1865 ..... 6, 72

Constitution of State of Georgia of 1868.....6, 9, 73, 75
Constitution of State of Georgia of 1877.....6, 7, 27, 56, 76
Constitution of the State of Illinois, Art. VIII, Sec. 20..... 45
Constitution of the United States:
Art. I, Sec. 2 15
Fifteenth Amendment, Sec. 1.....15, 24, 33
First Amendment 33
Fourteenth Amendment 24
Nineteenth Amendment, Sec. 1..... 15

Former Constitution of State of Kansas, Article XI, Section 1..... 46
Former Constitution of State of Utah, Article IV, Section 1.....48, 58
Former Constitution of State of Utah, Article XIII, Setion 3..... 48
Former Constitution of State of Washington, Article I, Section 12.. 46

Georgia Code (1933), Section 2-6601..... 56
Georgia Code (1933), Section 53-501..... 57
Georgia Code (1933), Section 74-105..... 57
Georgia Laws (1825), p. 171..... 71
Georgia Laws (1842), p. 171..... 71
Georgia Laws (1849-50), p. 376..... 72
Georgia Laws (1865-66), p. 253..... 73
Georgia Laws (1869), p. 162..... 75
Georgia Laws (1870), p. 432..... 76
Georgia Laws (1882-3), pp. 120-121..... 78
Georgia Laws (1908), p. 27..... 79
Georgia Laws (1917), p. 197..... 4
Georgia Laws (1918), p. 44..... 81
Georgia Laws (1921), pp. 38 and 39.....10, 81, 82
Georgia Laws (1922), p. 21 .....10, 82
Georgia Laws (extraordinary session 1923, pages 20 and 21).....53, 83
Georgia Laws (1927), pp. 39, 57.....3, 11, 78, 81, 84
Georgia Laws (1927), pp. 56 and 57.....3, 78
Georgia Laws (1931), page 102..... 80
Georgia Laws (1935), p. 12.....3, 12, 85

Massachusetts General Laws, Chapter 234, Sec. 1..... 63

Particular Sections of the Constitution of Georgia of 1877:
Amendment ratified Oct. 7, 1908.....6, 79
Amendment ratified Nov. 8, 1932.....6, 80
Article VII, Sec. II, Par. III.....7, 56
Article XII, Par. 1..... 27
Article VIII, Sec. I, Par. 1..... 56

Tennessee Laws 1919, Chapter 139..... 55

Miscellaneous Cited.

20 C. J., Sec. 13, p. 60..... 14
20 C. J., Sec. 15, p. 60..... 18
20 C. J., Sec. 37, p. 75..... 59
61 C. J., Sec. 2255, p. 1534..... 42
Cobb's Analysis and Forms (1846), pp. 674, 675..... 70
Commentaries on the Constitution of the United States, by Joseph Story, Sec. 462 25
Cooley on Taxation (2nd Ed.), p. 8..... 26
Cooley on Taxation (4th Ed.), Sec. 1773..... 43

Digest of the Laws of Georgia (1837), by Oliver Prince, pages 842, 843, 862 and 911.....70, 71

Irwin's Code, Section 4980..... 73

"Laws of Georgia of force 1820-1829," by Arthur Foster, page 333.... 71
29 L. R. A. 404.... 43

McElreath on the Constitution of Georgia:
Page 264, Sec. 402.... 70
Page 247, Sec. 336.... 69
Page 296, Sec. 542.... 72
Page 315, Sec. 639.... 73
Page 321, Sec. 678.... 73
Page 322, Sec. 684.... 74
Page 356, Sec. 854.... 77
Page 384, Sec. 1005.... 76

Michie's Code (1926), Section 993 (4).... 75, 78
Michie's Code (1926), Section 1015.... 76
Michie's Code of 1926, Section 6397.... 80
Michie's Code (1926), Section 6555.... 76

Park's Code of 1914 (Vol. V), Section 6397.... 80
Park's Code (1914), Section 1015.... 76
Park's Code (1914), Vol. I, Section 917.... 75, 78
Park's Code (Vol. V), Section 6555.... 76

9 R. C. L., Sec. 56, p. 1040.... 59, 60
9 R. C. L., Sec. 40, p. 1024.... 14

T. R. R. Cobb's New Digest Laws of Georgia:
Pages 1044, 1124, 1066, 1074, 1080.... 70, 71, 72

BLANK

PAGE

SUPREME COURT OF THE UNITED STATES.

No. 777, October Term, 1936.
No. 9, October Term, 1937.

NOLEN R. BREEDLOVE,
APPELLANT,

vs.

T. EARL SUTTLES, Tax Collector,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

This suit is a mandamus proceeding commenced by petition filed in the Superior Court of Fulton County, Georgia, by Nolen R. Breedlove, alleging himself to be a white male citizen of the United States of America, 28 years of age, and a resident of Fulton County, Georgia, for more than seven years next preceding the filing of the petition.

Upon interlocutory hearing a general motion to dismiss was sustained by the trial court, which in effect amounted to a dismissal of plaintiff's suit on general demurrer.

The Supreme Court of Georgia affirmed the judgment of the trial court and thereafter allowed an appeal to the Supreme Court of the United States.

Jurisdiction was noted in the Supreme Court of the United States reserving until the hearing "further consideration of the question of jurisdiction of this court."

The decision of the Supreme Court of Georgia, from which this appeal is taken, is found in volume 183 of the official reports of the Supreme Court of Georgia, page 189 (183 Ga., p. 189).

Portions of the pleadings material to a consideration of the issues presented and an analysis of the petition and amendments thereto are set forth in an appendix to this brief, beginning on page 69, immediately following page 67 of this brief.

The paragraph of the Constitution of Georgia which is challenged in this suit is Article II, Section I, Paragraph III of the Constitution of the State of Georgia (Section 2-603 of the Georgia Code of 1933), which is as follows:

> "To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and in the county in which he offers to vote six months next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of the time fixed by law for the payment of such taxes."

The pertinent provision of the General Tax Act challenged by the petition is Paragraph 1 of Section 2 of the General Tax Act approved March 28, 1935 (Ga. Laws 1935, p. 12), the pertinent language of which is identical with Section 92-108 of the Georgia Code of 1933, which section of the Georgia Code of 1933 is a codification of the corresponding paragraph of the General Tax Act approved August 25, 1927 (Georgia Laws 1927, page 57), and in the following language:

> "There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1, which shall be used for educational purposes in instructing children in the elementary branches of an English education only: Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting."

QUESTIONS PRESENTED.

Questions presented to the Supreme Court of the United States for determination are the following:

(1) The sufficiency of the petition as amended and of the assignments of error to raise a substantial federal question.

(2) Whether or not that portion of the Constitution and laws of Georgia which requires the payment of poll taxes as a prerequisite for registration for voting violates any clause of the Federal Constitution set forth in the petition or the amendments thereto and upon which error may be properly assigned.

(3) No direct attack is made upon the paragraph of the

Constitution of Georgia above quoted defining the qualifications of electors. The gist of plaintiff's complaint is that the payment of accumulated past-due taxes with penalties and interest thereon accrued from year to year is said to have resulted indirectly, in his case, in an unlawful limitation upon his alleged right to vote.

The petition alleges that appellant was, on March 20, 1936, twenty-eight years of age, that he had never paid any poll taxes and that by reason of his default from year to year the Registrar of Fulton County refused to register him as a voter unless he paid the sum of thirteen dollars and fifty cents for poll taxes which had accrued against him for previous years, including penalty and interest.

An examination of the provisions of the Constitution and laws of Georgia quoted in the Appendix will disclose this sum of $13.50 alleged in the petition to have been required of petitioner, includes the sum of one dollar per year for each of six years that petitioner has been in default in the payment of toll taxes required of him and other citizens, a mandatory penalty of one dollar per year provided by Section 92-6601 of the Georgia Code of 1933 (quoted Appendix, page 85, and the sum of one dollar and fifty cents interest, which sum is the accumulated interest on the $1.00 tax which had been required of petitioner for each of the six years for which his default had continued, this interest being charged pursuant to the provisions of the Act approved August 20, 1917.

Georgia Laws 1917, page 197; *Code of 1933*, Section 92-5001.

HISTORICAL ANALYSIS OF CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR ELECTORS IN GEORGIA, WITH REGARD TO PAYMENT OF TAXES AS A PREREQUISITE TO VOTING.

A complete list of all relevant provisions of the various Constitutions of Georgia and of pertinent laws enacted pursuant thereto is incorporated in the Appendix, beginning on page 69, following this brief.

A review of this list will show that the people of Georgia have prescribed from time to time in their fundamental law the following constitutional provisions with regard to payment of taxes as a qualification for electors.

The Constitution of 1789, Article IV, Section I, required as a qualification for electors that they shall "have paid all taxes for the year preceding the election" (Appendix, page 69).

The Constitution of 1798, Article IV, Section I, required that they shall "have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election."

This Constitution further provided an exemption from this requirement in the following language:

> "Provided, that in case of invasion, and the inhabitants shall be driven from any county, so as to prevent an election therein, such refugee inhabitants, being a majority of the voters of such county, may meet under the direction of any three justices of the peace thereof, in the nearest county, not in a state of alarm, and proceed to an election, without having paid such tax so required of electors" (Appendix, page 69).

The Constitution of 1861, Article V, Section I, prescribed that electors

> "shall have paid all taxes which may have been required of them, and which they have had an opportunity of paying agreeably to law, for the year preceding the election" (Appendix, page 72).

This identical language was incorporated in the Constitution of 1865, Article V, Section I (Appendix, page 72), and in the Constitution of 1868, Article II, Section II (Appendix, page 73).

The language was changed slightly in the Constitution of 1877 which provided (Article II, Section I, Paragraph II) as a qualification for an elector that he

> "shall have paid all taxes which may hereafter be required of him, and which he may have had an opportunity of paying, agreeably to law, except for the year of the election" (Appendix, page 77).

This provision of the Constitution of 1877 has been twice amended, first by the amendment ratified at a general election held October 7, 1908, and last by an amendment ratified at a general election held November 8, 1932.

The first of these two amendments (ratified October 7, 1908) is set forth on page 79 of the Appendix and required of the elector that he

> "shall have paid all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law."

The second and last amendment is the amendment now in question, ratified November 8, 1932 (page 2, supra), and

changed the language of the previous amendment ratified October 7, 1908, by striking therefrom the words

> "all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law"

and substituting in lieu thereof the words

> "all poll taxes that he may have had an opportunity of paying agreeably to law."

An examination of the statutes to which reference will now be made discloses that the language of the two last constitutional amendments ratified, respectively, in 1908 and 1932, has been construed to include both the masculine and feminine gender, and the petition concedes this, complaining only of the classifications prescribed by the State Constitution and laws with respect to persons above 60 years of age and with respect to females who do not register for voting, and of the indirect result in the case of petitioner of the application to him of the provisions of the Constitution and laws of the State of Georgia requiring payment of poll taxes.

Ever since the adoption of the Constitution of 1877 the amount of the poll tax for each year has been limited to $1.00 and the proceeds have been constitutionally allocated to educational purposes (page 3, supra).

SOURCE OF AUTHORITY WITH RESPECT TO LEVY OF POLL TAXES.

The levy of poll taxes is not required by the Constitution of Georgia. Article VII, Section II, paragraph III of the Constitution of Georgia (Georgia Code of 1933, Section 2-5004) provides only that

"no poll tax shall be levied except for educational purposes and such tax shall not exceed $1.00 annually upon each poll."

Pursuant to this constitutional authority and to similar authorities in other previous constitutions, the Legislature in the General Tax Acts passed from year to year has levied an annual poll tax not exceeding $1.00 upon each poll. This levy has remained effective until the adoption of the next General Tax Act on which subsequent date the former levy was superseded and poll taxes have been thereafter collected by virtue of the last General Tax Act providing therefor.

While some classifications which will be referred to in subsequent paragraphs of this statement have first appeared as special acts of the Legislature relating thereto, none of these acts providing for classifications only have ever provided for the levy of any poll tax and each one has been superseded from time to time by the terms of a General Tax Act providing a poll tax operating uniformly upon such classes of citizens as the Legislature has in the various General Tax Acts from time to time prescribed.

These classifications and the General Tax Acts which are now in question are analyzed in the next section of this statement.

CLASSIFICATIONS PRESCRIBED FROM TIME TO TIME WITH RESPECT TO LIABILITY FOR POLL TAXES.

The State, in the exercise of its sovereign power, has prescribed from time to time five distinct classifications of citizens who, because of their poverty, service to the

state, physical disability or consideration for natural limitations imposed by sex have been relieved of this obligation, either constitutionally or by statute.

The act approved December 12, 1804 (Appendix, page 70), provided a poll tax of

> "thirty-one and a quarter cents on all free male white persons of the age of twenty-one years and upwards in this State, provided, nevertheless, that in all cases of extreme indigence or infirmity, the inferior court of each county shall be and they are hereby authorized to remit the poll tax upon such indigent and infirm persons claiming the same."

The act approved December 24, 1825 (Appendix, page 71), introduced an exemption of persons sixty years of age and upwards.

This separate classification with respect to persons sixty years of age and upwards has been carried forward into every General Tax Act adopted by every subsequent Legislature for past one hundred years. Many of these acts appear in the appendix.

Both the Constitutions of 1868 and the present Constitution of 1877 authorize a poll tax "not exceeding one dollar annually on each poll," and limited as to use "for educational purposes only" (Appendix, pages 73 and 76), but the levy and classification of citizens with respect to liability for poll taxes has been statutory.

The third classification, relating to blind persons, was at first limited to "blind persons having in their own right taxable property not exceeding in value five hundred dollars" (Act approved March 18, 1869, Appendix, page 74), but beginning with the act approved December 22, 1886 (Appendix, page 75), was extended to cover all blind

persons, and this has remained the law of Georgia to the present date.

The fourth classification related to crippled and disabled Confederate soldiers, entered with the Act approved July 23, 1883, was carried forward through subsequent tax acts to and including the Act approved August 25, 1927, and the Codes of 1895, 1911, and Michie's Code of 1926. However, with the attainment of the age of sixty years by this class of citizens, this classification has been omitted from subsequent tax acts and from the present Code of 1933 (Appendix, pages 77 and 78).

Prior to the adoption of the Nineteenth Amendment to the Constitution of the United States the State of Georgia had never levied a poll tax upon any except its male citizens, and all general tax laws are so limited.

The fifth classification, relating to female citizens, followed the adoption of the Nineteenth Amendment to the Constitution of the United States. After the adoption of this amendment the Legislature by the General Tax Act effective beginning January 1, 1922 (Georgia Laws 1921, page 39), changed the former policy of this State, which had theretofore levied a poll tax only on its male inhabitants, by levying a poll tax

> "upon each and every inhabitant of the State between the ages of twenty-one and sixty years on the days fixed for the return of property for taxation a poll tax of one dollar which shall be for educational purposes" (Appendix, page 81).

This broad extension remained the law of Georgia for only one year, for beginning with the next session of the Legislature an act was passed August 21, 1922 (Georgia Laws 1922, page 21), which provided a separate classifi-

cation with respect to female inhabitants of the state who do not register for voting.

This classification was effected by adding to the General Tax Act, which had been approved the previous year, and to the corresponding section of the Code of Georgia, the following language:

> "Nor shall this Act (Tax) be required or demanded of female inhabitants of the State who do not register for voting, provided that all females are required to pay all back poll tax due from the time they shall become eligible to vote to the date of their registration." (See Appendix, page 82.)

Section 3 and Section 4 of the Act approved August 21, 1922 (quoted on page 83 of the Appendix), and paragraph 1 (a) of the Act approved December 19, 1923, at the extraordinary session of the Legislature for that year (quoted on page 83 of the Appendix) were not carried forward into the General Tax Act approved August 25, 1927, effective beginning January 1, 1928 (Appendix, page 84); nor the General Tax Act approved March 28, 1935, effective beginning January 1, 1936. (Appendix, page 85); nor are the provisions of these sections of the Act approved August 21, 1922, and of the Act approved December 18, 1923, challenged in the petition.

The language of the General Tax Act approved August 25, 1927 (Georgia Laws 1927, page 57), with respect to the separate classification of females for poll tax purposes is as follows:

> "Nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting."

The language of the General Tax Act approved March 28, 1935 (Georgia Laws 1935, page 12), with respect to the separate classification of females for poll tax purposes is as follows:

> "Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting."

Section 92-108 of the Georgia Code of 1933, quoted on page 3 of this brief, is a codification of the General Tax Act approved August 25, 1927, and the language of the proviso is identical with the pertinent language of the General Tax Act approved March 28, 1935, above quoted, which is the last General Tax Act passed by the Legislature of Georgia and the General Tax Act under which poll taxes are now levied in this state.

BRIEF OF LAW AND ARGUMENT.

The points relied on by appellant in the various portions of the record disclosed by plaintiff's petition as amended will be treated in the following order:

I. The right to vote is not a right arising by virtue of the Constitution of the United States.

II. All contentions based upon the preamble to the Constitution or upon the provisions of article I defining the powers of Congress, or of article VI, clause 2, defining the supreme law are without merit.

III. Regulations prescribed by state authority defining the qualifications of voters in the state are not prohibited by the Privileges and Immunities clause of Article IV, Section 2, Paragraph 1 of the Constitution of the United States.

IV. The Constitution and laws of Georgia do not deny to citizens of the United States residing in Georgia a republican form of government as defined in Article IV, Section 4 of the Constitution of the United States.

V. No right guaranteed by the First Amendment or by the Fifteenth Amendment to the Constitution is withheld by the challenged laws.

VI. The contentions of appellant based upon the Fourteenth Amendment to the Federal Constitution are without merit.

VII. A consideration of the nature of poll taxes and of the right of the state to classify its citizens with respect to liability therefor.

VIII. An analysis of the constitutional attack based upon the Nineteenth Amendment.

IX. No constitutional restriction upon a state's power to tax will be inferred.

X. Poll taxes in Georgia are constitutionally limited to educational purposes, and a classification placing primary responsibility therefor upon men is both reasonable and natural.

XI. Contentions based upon the Nineteenth Amendment to the Federal Constitution are without merit.

XII. Authority of the Massachusetts woman-juror case.

XIII. The separate classification of citizens above the age of sixty years is not unlawful.

I.

THE RIGHT TO VOTE IS NOT A RIGHT ARISING BY VIRTUE OF THE CONSTITUTION OF THE UNITED STATES.

"The right to vote is a political right or privilege. It is not a natural right of the citizen, but a franchise dependent upon law, by which it must be conferred to permit its exercise."

Elections, Section 13, 20 C. J., page 60.

"The right of suffrage is derived from the States under State Constitutions, or in the territorial legislatures. It is not founded upon the Federal Constitution except in so far as the Fifteenth Amendment limits the right of the States to discriminate against persons by reason of their race, color, or previous condition of servitude."

Elections, Section 40, 9 R. C. L., page 1024.

The words of R. C. L. last quoted were written before the adoption of the Nineteenth Amendment to the Federal

Constitution. An analysis of authorities to be cited under later divisions of this brief will show that the only rights arising under the Constitution of the United States, or the amendments to the Constitution, with respect to suffrage, are those prescribed by the following sections and the following amendments, to wit:

(1) "The Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

Constitution of the United States, Article I, Section 2.

(2) "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Fifteenth Amendment, Section 1.

(3) "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

Nineteenth Amendment, Section 1.

The case of *Minor v. Happersett,* 88 U. S. (21 Wall.) 162, 22 L. ed. 627, decided at the October Term, 1874, of the Supreme Court of the United States, contains an exhaustive treatment of the nature of suffrage and a history of the classes entitled to its exercise under the Constitutions of the thirteen original states at the time of the adoption of the Federal Constitution and of the classes so entitled in states admitted into the Union during the early years of the republic.

In the opinion, 88 U. S. (21 Wall.) 172 and 173, 22 L. ed. 627, is an exhaustive analysis of the various constitutional requirements of the original thirteen states for the exer-

cise of the elective franchise therein, at or immediately after the time of the adoption of the Federal Constitution. This list of the separate provisions of the various State Constitutions cited as authority for the ruling by the Supreme Court of the United States that

> "the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted"

and the ruling of the Court therein that suffrage was not coextensive with citizenship in the states at the time of the adoption of the Constitution, includes the following separate categories then in force in the separate states:

New Hampshire excluded "paupers and persons excused from paying taxes at their own request."

Connecticut required either ownership of a freehold of forty shillings or forty pounds personal estate.

Massachusetts required either a freehold estate within the commonwealth with an annual income of three pounds or any estate of the value of sixty pounds.

New York required either possession and ownership of a freehold of the value of twenty pounds within the county or rental of a tenement therein of the yearly value of forty shillings.

New Jersey required ownership of "fifty pounds, proclamation money, clear in the same."

Maryland required ownership of a freehold estate of fifty acres of land in the county in which (the voter) offers to vote, and residing therein, or the possession of property in the state above the value of thirty pounds current money.

North Carolina required as a prerequisite to voting for senators ownership of a "freehold within the same county of fifty acres of land for six months next before and at the day of election."

South Carolina required ownership of a "freehold of fifty acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot) * * * hath paid a tax the preceding year of three shillings sterling towards the support of the government."

Pennsylvania required two years' residence next before the election, and "within that time paid a State or County tax which shall have been assessed at least six months before the election."

Georgia required payment of tax for the year next preceding the election. (See *Opinion,* 88 U. S. [21 Wall.], pp. 172 and 173, 22 L. Ed. 629 and 630.)

One question under consideration in the Minor case was the effect of the first section of the Fourteenth Amendment to the Constitution of the United States upon a provision of the Constitution of the State of Missouri limiting suffrage in that state to male citizens. While this decision was rendered prior to the adoption of the Nineteenth Amendment, the unanimous decision is authoritative upon the jurisdiction of states in the matter of suffrage except in so far as that jurisdiction is limited by the Constitutional Amendments.

After observing *(Opinion,* 88 U. S., p. 178, 22 L. ed. 631, that the arguments advanced in behalf of this citizen might be appropriate for a legislative forum, but

"ought not to be permitted to influence our judgment

in determining the present rights of the parties now litigating before us,".

and that

"no argument as to woman's need of suffrage can be considered. We can only act upon her rights as they exist. It is not for us to look at the hardship of withholding. Our duty is at an end if we find it is within the power of a State to withhold,"

the Court closes with this paragraph:

"*Being unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon anyone,* and that the Constitutions and laws of the several States which commit that important trust to men alone are not necessarily void, we affirm the judgment."

88 U. S. (21 Wall.) 178, 22 L. ed. 631.

With respect to the power of the states to confer and regulate the right of suffrage, Corpus Juris says:

"Subject to the 'constitutional restrictions as to race, color and previous condition of servitude, the States' had, after the adoption of the Fifteenth Amendment, 'supreme and exclusive power to regulate the right of suffrage and to determine the class of inhabitants who might vote.' "

Elections. Section 15, 20 C. J., p. 60.

The following excerpts from the opinion in the case of McPherson v. Blacker, 146 U. S. 1, beginning on page 25, define the rights of the states in this particular:

"The Legislative power is the Supreme authority except as limited by the Constitution of the State, and the sovereignty of the people is exercised through

their representatives in the legislature unless by the fundamental law power is elsewhere reposed * * *. What is forbidden or required to be done by a State is forbidden or required of the legislative power under State Constitutions as they exist. The clause under consideration does not read that the people or the citizens shall appoint, but that 'each State shall'; and if the words 'in such manner as the legislature thereof may direct' had been omitted, it would seem that the legislative power of appointment could not have been successfully questioned in the absence of any provision in the State Constitution in that regard.

"The Constitution *does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors.* It recognizes that the people act through their representatives in the legislature, and *leaves it to the legislature exclusively to define the method of effecting the object.*"

McPherson v. Blacker, 146 U. S. 1, on pages 25 and 27, 36 L. ed. 874.

The portions of the opinion in this case above quoted are followed by a review of the journal of the constitutional convention and of the efforts therein made to provide that the President should be elected by "the citizens of the United States," or by the "people," or "by electors to be chosen by the people," all of which proposals were voted down in the convention. The opinion also reviews the various efforts which had been made from time to time, without success, to have the Constitution amended so as to provide for a uniform mode of choice by the people. After a further review of the powers vested in Congress with respect to elections for President and Vice-

President, and after observing that by article II, section 1, paragraph 3, Congress has power "to determine the time of choosing the electors and the day on which they are to give their votes which is required to be uniform throughout the United States," the Supreme Court says:

> "* * * otherwise the *power and jurisdiction of the State is exclusive,* with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that Congressional and Federal influence might be excluded."
>
> *McPherson v. Blacker,* 146 U. S. 1, on page 35, 36 L. ed. 869, on page 877.

The McPherson case related to the constitutionality of an act of the Legislature of the State of Michigan passed in 1891, which directed that the manner of appointment of electors for President and for Vice-President of the United States should be the election of an elector and an alternate elector in each of the twelve congressional districts into which the State of Michigan was divided, and of an elector and an alternate elector at large in each of two districts defined by the act.

With further reference to the question of the constitutionality of the Michigan law, the Supreme Court said:

> "The right to vote intended to be protected refers to the right to vote as established by the laws and Constitution of the State. There is no color for the contention that under the amendment every male inhabitant of the State being a citizen of the United States has from the time of his majority a right to vote for presidential electors."
>
> *McPherson v. Blacker,* 146 U. S., pages 38 and 39, 36 L. Ed. 869, on page 878.

In *Ex parte Yarbrough,* 110 U. S., page 651, on page 663 et seq., 28 L. Ed. 274, on page 278, the Supreme Court of the United States defines the comparative functions of the Constitutions of the United States and of the states as a source of right with respect to the exercise of the elective franchise used, in the following language:

> "The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election of members of Congress. Nor can they prescribe the qualifications for voters for those eo nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for members of Congress. * * *"

An exceedingly clear statement of the function of a state in this regard and of the limitation imposed by the Fifteenth Amendment is found in the case of *Karem v. United States* (C. C. A. 6th Circuit), 121 F., p. 250, on p. 255, which case, after quoting from the decisions of the Supreme Court of the United States in the case of *United States v. Cruikshank et al.,* 92 U. S. (2 Otto) 542, 23 L. ed. 588, says:

> "The Fifteenth Amendment is therefore a limitation upon the powers of the States in the execution of their otherwise unlimited right to prescribe the qualification of voters in their own elections and the power of Congress to enforce this limitation is necessarily limited to legislation appropriate to the correction of any discrimination on account of race, color, or condition. The affirmative right to vote in such elections is still dependent upon and secured by the Constitu-

tion and laws of the State, the power of the State to prescribe qualifications being limited in only one particular. The right of the voter not to be discriminated against at such elections on account of race or color is the only right protected by this amendment, and that right is a very different right from the affirmative right to vote."

In a unanimous decision rendered May 11, 1887, in the case of *Kineen v. Wells et al.*, 144 Mass. 497, 11 N. E. 916, 59 Am. Rep. 105, the Supreme Judicial Court of Massachusetts said:

"The right or privilege of voting is a right or privilege arising under the Constitution of each State, and not under the Constitution of the United States. The voter is entitled to vote in the election of officers of the United States by reason of the fact that he is a voter of the State in which he resides. He exercises this right because he is entitled to by the laws of the State where he offers to exercise it and not because he is a citizen of the United States.

"The qualifications of voters are fixed by State legislation. The requisitions as to ownership of property, citizenship, sex, residence, in connection with the right of voting, vary with the Constitution or laws of the several States. However unwise, unjust, or even tyrannical its regulations may be in this regard, the right of each state to define the qualifications of its voters is complete and perfect, except so far as it is controlled by the Fifteenth Amendment (now the Fifteenth and Nineteenth Amendments) to the Constitution of the United States."

In a decision rendered prior to the adoption of the Fifteenth Amendment to the Constitution, and which has been cited substantially in other more recent decisions, is the

case of *Anderson v. Baker et al.* (Supreme Court of Maryland, November 2, 1865), 23 Md. 531, construing a state law limiting suffrage to white males above twenty-one years of age. The third headnote of this decision is as follows:

> "Among the absolute, unqualified rights of the States, is that of regulating the elective franchise. It is the foundation of State authority. The most important political function exercised by the people in their sovereign capacity. Whilst 'the right of the people to participate in the legislature is the best security of liberty and foundation of all free government,' yet it is subordinate to the higher power of regulating the qualifications of the electors and the elected."

A leading case on this question is the case of *Stone v. Smith,* 159 Mass. 413, 34 N. E. 521 (decided by the Supreme Judicial Court of Massachusetts, June 22, 1893), which decision related to Article 3 of the Amendments to the Constitution of the State of Massachusetts requiring payment of state or county taxes within two years as a prerequisite of voting.

The following excerpts from the opinion in this case are directly in point:

> "The only provision of the Constitution of the United States as originally adopted concerning the qualification of electors in States is that prescribed in Article I, Section 2.
>
> "When the Constitution of the United States was adopted the qualifications required of an elector of a representative or representatives in the house of representatives of Massachusetts were:
>
> (1) He should be a male person twenty-one years

of age, resident in the town where he attempted to vote for the space of one year next preceding the election, and

(2) Should have a freehold estate within the town of the annual income of three pounds, or any estate of the value of sixty pounds.

"A constitution with such restrictions on the right to vote was regarded by the framers of the Constitution of the United States as Republican in form."

With respect to the Fourteenth Amendment to Constitution of the United States the Supreme Judicial Court of Massachusetts says:

"This distinctly recognizes the right of a state to deny or abridge the right to vote of the male inhabitants who are 21 years of age, and it is well known that many of the States have, from time to time, by an impartial and uniform rule of prohibition, denied the right to vote to such of their male inhabitants as were thought not to possess the qualifications necessary for an independent and intelligent exercise of the right.

"The right to vote is not one of the privileges and immunities of citizens of the United States within the meaning of Article 14 of the Amendments of the Constitution of the United States."

With respect to the prohibition of the Fifteenth Amendment, the Supreme Judicial Court of Massachusetts, speaking at a prior time to the adoption of the Nineteenth Amendment, says:

"This is the only prohibition of the States contained in the Constitution of the United States which concerns the right to vote."

II.

ALL CONTENTIONS BASED UPON THE PREAMBLE TO THE CONSTITUTION OR UPON THE PROVISIONS OF ARTICLE I, DEFINING THE POWERS OF CONGRESS, OR OF ARTICLE VI, CLAUSE 2, DEFINING THE SUPREME LAW, ARE WITHOUT MERIT.

"The Preamble never can be resorted to, to enlarge the powers confided to the general government, or any of its departments. It cannot confer any power per se. It can never amount, by implication, to an enlargement of any power expressly given. It can never be the legitimate source of any implied power, when otherwise withdrawn from the Constitution."

Commentaries on the Constitution of the United States by Joseph Story, Section 462.

"Although that Preamble indicates the general purpose for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power. * * * Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the Preamble, it be found in some express delegation of power to be properly implied therefrom."

Jacobson v. Massachusetts, 197 U. S. 11, 22, 49 L. ed. 643, 648.

The limitation of article I, section 8, clause 1, defining the power of Congress to lay and collect taxes, which provides that

"all duties, imposts and excises shall be uniform throughout the United States,"

is a limitation only on Congress with respect to the taxes which Congress is authorized to impose.

This clause of the Federal Constitution "establishes the rule only for taxation by the Federal Government, and has no application to the powers of taxation of a state or territorial legislature."

Peacock v. Pratt (C. C. A. 9th Circuit, Feb. 9, 1903), 121 F. 772.

In so far as this particular clause of the Constitution is concerned, it imposes no restraints upon the state with respect to the method of state taxation.

Davidson v. New Orleans, 96 U. S. (6 Otto) 97, 105, 24 L. ed. 616, 620.

Likewise, article I, section 9, clause 4, prescribing the mode in which Congress may lay a capitation or other direct tax, is not a limitation on state power, but merely a limitation upon the power of Congress.

Pohl v. Chicago, M. & St. Paul Rwy. Co. (1916), 52 Mont. 572, 160 P. 515, citing *Cooley on Taxation* (2d Ed.), p. 8 (quoted 160 P. 516).

The requirement of uniformity imposed by the Constitution on Congress in levying excise taxes is *not intrinsic, but geographic.*

Billings v. U. S., 232 U. S. 261, 58 L. ed. 596;
Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969;
Munn v. Bowers (C. C. A. 2nd Circuit), 47 F. (2) 204, third division of opinion, p. 205, cert. denied by Supreme Court, 283 U. S. 845, 41 S. Ct. 492, 75 L. ed. 1454.

Article VI, Clause 2 of the Constitution of the United States, defines the supreme law of the land and the fact that the Constitution and laws of Georgia are grounded upon a due regard for this provision of the Federal Constitution is evidenced by Article XII, paragraph 1 of the present Constitution of the State of Georgia (*Code of 1933*, Section 2-8501), which is as follows:

> "The laws of general operation in this State are, first: As the Supreme law: The Constitution of the United States, the laws of the United States in pursuance thereof and all treaties made under the authority of the United States."

Appellee respectfully insists that this section of the Federal Constitution can have no application in the case at bar considered separately and apart from other provisions of the Federal Constitution, or laws of the United States or treaties made under the authority of the United States. The validity and binding authority of relevant portions of the supreme law are conceded, and appellee contends that no right of appellant arising either under the Constitution or under any law of the United States has been violated.

III.

REGULATIONS PRESCRIBED BY STATE AUTHORITY DEFINING THE QUALIFICATIONS OF VOTERS IN THE STATES ARE NOT PROHIBITED BY THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE IV, SECTION 2, PARAGRAPH 1 OF THE CONSTITUTION OF THE UNITED STATES.

It has been repeatedly held that the Privileges and Immunities Clause of Article IV of the Constitution of the

United States has no application to a citizen of the state whose laws are complained of.

Bradwell v. State, 83 U. S. (16 Wall.) 130, 138, 21 L. ed. 442, 445.

It was the object of this clause of the Constitution to relieve citizens of each state

> "from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; it gives them the right of free ingress into other states, and egress from them; it insures to them in other states the same freedom possessed by the citizens in those states in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of the laws * * *.
>
> "But the privileges and immunities secured to citizens of each state in the several states, by the provision in question, are those privileges and immunities which are common to the *citizens of the latter states under their Constitution and Laws by virtue of their being citizens.*"

Paul v. Virginia, 75 U. S. (8 Wall.) 168 (3), 180, 19 L. ed. 357, 360.

This clause of the Constitution

> "did not create those rights which it called privileges and immunities of citizens of the states. It threw around them in that clause no security for the citizens of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens.
>
> "Its sole purpose was to declare to the several states that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise,

the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction.

"It would be the vainest show of learning to attempt to prove by citations of authority that, up to the adoption of the recent amendment (the Fourteenth Amendment), no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the states—such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing obligation of contracts. But with the exception of those and a few other restrictions, the entire domain of the privileges and immunities of citizens of the states, as above defined, lay within the constitutional and legislative power of the states, and without that of the Federal Government."

Slaughter House Cases, 83 U. S. (16 Wall.) 36 (4), 77, 21 L. ed. 394, 409.

IV.

THE CONSTITUTION AND LAWS OF GEORGIA DO NOT DENY TO CITIZENS OF THE UNITED STATES RESIDING IN GEORGIA A REPUBLICAN FORM OF GOVERNMENT AS DEFINED IN ARTICLE IV, SECTION 4 OF THE CONSTITUTION OF THE UNITED STATES.

The alleged denial to appellant of the enjoyment of the privileges of republican form of government is made the subject matter of the sixth assignment of error (Transcript pp. 39 and 40) and of the paragraph beginning at the middle of page 45 of the transcript of appellant's statement. This point is referred to in the first paragraph of plain-

tiff's first amendment (Transcript p. 20), but the amendment fails to set forth the particulars in which the alleged constitutional right has been violated.

The question of what constitutes a republican form of government has been the subject of careful analysis by the Supreme Court of the United States in a large number of well-considered cases, among them the following:

Minor v. Happersett, 88 U. S. (21 Wall.) 162, 22 L. ed. 627, which was a unanimous decision of the Supreme Court of the United States upon the constitutionality of a provision of the State Constitution of Missouri, which limited the right of franchise to male citizens only. Mrs. Virginia Minor, a native born white citizen of the United States and of the State of Missouri, over the age of twenty-one years, wishing to vote for electors for president and vice-president of the United States and for representatives in Congress at the General Election in November, 1872, applied to one Happersett, the registrar of voters, to register her as a lawful voter, which registrar refused to do, assigning for cause that the appellant was not "a male citizen of the United States," but a woman. Upon consideration by the Supreme Court of the United States of a challenge based upon Article IV, Section 4 of the Constitution of the United States guaranteeing a republican form of government, the Supreme Court said (88 U. S., p. 175, 22 L. ed. 631):

> "No particular government is designated as Republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended.
>
> "The guaranty necessarily implies a duty on the part of the States themselves to provide such a gov-

ernment. All the States had government when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided: These governments the Constitution did not change. *They were accepted precisely as they were,* and it is therefore to be presumed that they were such as it was the duty of the State to provide."

This section of the Constitution expresses the full limit of national control over the internal affairs of the state. U. S. C. A., Part 2 of "Constitution," p. 427, citing:

> *South Carolina v. United States* (Ct. Cl. 1905), 199 U. S. 454, 26 S. Ct. 110, 50 L. ed. 261, 4 Ann. Cas. 737.

In *In re Duncan* (Texas, 1891), 139 U. S. 449 on p. 461, 11 S. Ct. 573, 35 L. ed. 219, the Supreme Court said in a unanimous opinion:

> "By the Constitution, a Republican Form of Government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies * * *; but, while the people are thus the source of political power, their governments, National and State, have been limited by written Constitutions, and they have themselves set bounds to their own power, as against the sudden impulses of mere majorities."

Luther v. Borden et al., 48 U. S. (7 How.) 1, 12 L. ed. 581, should forever set at rest any contentions of the character made by appellant with respect to whether or not the Constitution and Laws of Georgia establish and provide a

republican form of government within the meaning of the Federal Constitution and with respect to the functions and province of the state relative thereto.

The facts out of which the case of Luther v. Borden et al. arose are these:

At the time of the American Revolution Rhode Island, unlike her sister states, did not adopt a new Constitution, but continued the form of government established by the charter of Charles the Second, making only such alterations as were necessary to adapt it to their condition and rights as an independent state.

In 1841 a portion of the people held meetings and formed associations, which resulted in the election of a convention to form a new Constitution to be submitted to the people for adoption or rejection. This convention framed a constitution, directed a vote to be taken upon it, declared afterwards that it had been ratified by a majority of the people of the state, and under it elections were held for Governor, members of the Legislature and other officers who proceeded to assume their duties.

But the charter government did not acquiesce in these proceedings. On the contrary, it passed stringent laws, and finally passed an act declaring the state under martial law. In May, 1843, a new Constitution, which had been framed by a convention called together by the charter government, went into operation and had continued until the question was brought before the Supreme Court of the United States for determination.

The Supreme Court of the United States did not regard the question judicial in nature and held that the question as to whether a proposed constitution or amendment was ratified or not by the people of the state was a question for determination by the political department.

Under the charter government, the Legislature, in the exercise of delegated power, had confined the right of suffrage to freeholders (48 U. S. [7 How.], p. 35).

The constitutional convention, which assembled without the authority of the charter government, had framed a constitution by which the right of suffrage was extended to every male citizen of 21 years of age, who had resided in the state for one year, and in the town in which he offered to vote for six months next preceding the election (48 U. S. [7 How.] 35).

Upon a consideration of the question of jurisdiction, the Supreme Court said (opinion, 48 U. S. [7 How.], p. 40):

> "Certainly it is not part of the judicial functions of any court of the United States to prescribe the qualification of voters in a state, giving the right to those to whom it is denied by the written and established Constitution and laws of the state, or taking it away from those to whom it is given."

V.

NO RIGHT GUARANTEED BY THE FIRST AMENDMENT OR BY THE FIFTEENTH AMENDMENT TO THE CONSTITUTION IS WITHHELD BY THE CHALLENGED LAWS.

The First Amendment to the Constitution of the United States is not a limitation on the powers of the state.

Lloyd v. Dollison, 194 U. S. 445, 447, 48 L. ed. 1062, 1065;
Ellenbecker v. Plymouth County, 134 U. S. 31, 34, 33 L. ed. 801, 803.

The first paragraph of the Fifteenth Amendment of the Constitution of the United States is referred to in para-

graph 15 of the petition (Transcript p. 6), paragraph 30 of the petition (Transcript p. 10), and paragraph 34 (g) of the petition (Transcript p. 12). Appellant does not set forth anywhere in the petition or in the amendments thereto any connection between the act of the Tax Collector in denying registration without payment of taxes required by the State Constitution, and any pertinent status related in any way to either "race, color, or previous condition of servitude." The expressions used in paragraph 30 of the petition must be considered merely as either a flight of oratory or a play upon words.

United States v. Cruikshank et al., 92 U. S. (2 Otto), pp. 542, 555, 23 L. ed. 588, 592, and *Ex Parte Yarbrough*, 110 U. S., pp. 651, 665, 28 L. ed. 274, 278, define both the extent and the limitation of right arising under the Fifteenth Amendment with respect to the elective franchise.

> "In all cases where the former slave holding States had not removed from their Constitutions the words 'white man' as a qualification for voting, this provision did, in effect, confer on him the right to vote, because, being paramount to the State law and a part of the State law, it annulled the discriminating word 'white' (italics), and thus left him in the enjoyment of the same right as white persons."
>
> *Ex Parte Yarbrough*, 110 U. S., Opinion beginning page 665.

> "The right of suffrage is not a necessary attribute of national citizenship; but exemption from discrimination in the exercise of that right on account of race, etc., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States.

The first has not been granted or secured by the Constitution of the United States; but the last has."

United States v. Cruikshank et al., 92 U. S., opinion beginning page 555.

Butler v. Perry, 240 U. S. 328, 36 S. Ct. 258, 60 L. ed. 672, affirming 67 Fla. 405, 66 So. 150, involved a challenge upon the Florida Alternative Road Poll Tax Law. The state statute required every able-bodied male person between the ages of 21 and 45 years to perform six days labor on the roads, with an alternative poll tax of three dollars. The Supreme Court of the United States held that this statute did not impose involuntary servitude, a contention made in paragraphs 15, 30 and 34 (g) of the petition in the case at bar.

VI.

THE CONTENTIONS OF APPELLANT, BASED UPON THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION, ARE WITHOUT MERIT.

The analysis on page 103 of this brief discloses that appellant makes one general challenge, based upon the Fourteenth Amendment, and separate challenges based, respectively, upon the citizenship, the privileges or immunities clause, the due process and equal protection clauses thereof.

Although all challenges based upon the provisions of this amendment have been completely answered by a consideration in section I of this argument of the nature of the privilege of franchise, appellee respectfully submits the following additional authorities relating particularly to this amendment to the Constitution.

In *Gogaur v. Timberlake et al.* (Supreme Court of Indiana, Feb. 24, 1897), 148 Ind. 38, 46 N. E. 339, 62 Am. St. Rep. 487, 37 L. R. A. 644, as in *Minor v. Happersett,* 88 U. S. (21 Wall.) 162, supra, the right of women to vote by virtue of certain provisions of the Federal Constitution was inquired into.

The Fourteenth Amendment was cited by the appellant, and after quoting at length from Judge Cooley's "Principles of Constitutional Law"; Story, "Constitution" (5th Ed.); Black's "Constitutional Law," and other standard authorities, the Supreme Court of Indiana reviews in an exhaustive manner the scope and effect of the references in the Constitution of the United States to this subject, and says with respect to the right of the states in this regard:

> "It is upon this theory alone that the great variety of provisions with reference to suffrage and the qualifications upon which the privilege is founded in the several constitutions of the states, and, although not always in accord, they are not in conflict with the Constitution of the United States. Appellant is in error in assuming that citizenship and suffrage are by the Federal Constitution made inseparable. Many are citizens, and not voters, unless we may hold that the State Constitution does not discriminate against persons on account of age, residence, etc., and that disfranchisement for crime, etc., may not be made by law."

Pope v. Williams, 193 U. S. 621, 48 L. Ed. 817, challenged the action of a board of registry in the State of Maryland in refusing to register appellant as a legal voter on the ground of his noncompliance with the Maryland law making it necessary for a person coming into the state,

with the intention of residing therein, to register his name with the Clerk of the Circuit Court. This law, quoted in a footnote (193 U. S. 622), forbade registration as a legal voter to such a citizen until one year after his intent to become a legal voter had been thus evidenced.

Appellant sought to register for voting without complying with this law requiring a twelve months declaration, and challenged the statute as being repugnant to the citizenship clause and the equal protection clauses of the Constitution of the United States, and also as being repugnant to the

> "general spirit of the Constitution of the United States and the fundamental rights of citizens of the United States which deny to a State the power to attach unreasonable or burdensome conditions to the free movement of citizens of the United States out of, into and settlement within the confines of any State, District or Territory within the United States."

The issue was presented as to whether, with reference to the exercise of the privilege of voting in Maryland, the Legislature of that state had the legal right to provide that a person coming into the state to reside should make the declaration of intent a year before he should have the right to be registered as a voter in that state.

After observing that the privilege to vote in any state is not given by the Federal Constitution, or by any of its amendments, and that the privilege is not one

> "springing from citizenship of the United States (Minor v. Happersett, 88 U. S. [21 Wall.] 162, supra). It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship in the United States,"

the Court had the following to say with respect to the freedom of the states in the regulation of the exercise of this privilege by citizens of the United States residing therein:

> "In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution. The state might provide that persons of foreign birth could vote without being naturalized, and, as stated by Mr. Chief Justice Waite in Minor v. Happersett, 21 Wall. 162, 22 L. ed. 627, such persons were allowed to vote in several of the states upon having declared their intentions to become citizens of the United States. Some states permit women to vote; others refuse them that privilege. A state, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon anyone, and the conditions under which that right is to be exercised are matters for the states alone to prescribe, subject to the conditions of the Federal Constitution, already stated."

Prior to the adoption of the Nineteenth Amendment to the Federal Constitution a state did not violate either the letter or the spirit of the Fourteenth Amendment by denying to women the right to vote on account of sex.

United States v. Susan B. Anthony (Circuit Court N. Y., June 18, 1873), 11 Blatchf. (U. S.) 200, 24 Fed. Cas. No. 14,459. This Court says (24 Fed. Cas., p. 831, column 1):

> "This view is assumed in the second section of the fourteenth amendment, which enacts, that if the right to vote for federal officers is denied by any state to

> any of the male inhabitants of such state, except for crime, the basis of representation of such state shall be reduced in a proportion specified. Not only does this section assume that the right of male inhabitants to vote was the especial object of its protection, but it assumes and admits the right of a state, notwithstanding the existence of that clause * * * to deny to classes or portions of the male inhabitants the right to vote which it allowed to other male inhabitants. The regulation of the suffrage is thereby conceded to the States as a States' right."

The *opinion in the Susan B. Anthony case then cites Bradwell v. the State,* 83 U. S. (16 Wall.) 130, as authority for two propositions, namely: First, that the rights referred to in the Fourteenth Amendment are those belonging to a person as a citizen of the United States and not as a citizen of the state; second, that a right of the character here involved is not one connected with citizenship of the United States. The Bradwell case was an appeal to the Supreme Court of the United States by one Mrs. Myra Bradwell on writ of error to the Supreme Court of Illinois, from an adverse judgment of the state court denying to the appellant the right to practice law in the State of Illinois, because females were not by state law eligible to practice law in the courts of that state. Article IV, Section 2, and the Privileges and Immunities Section of the Fourteenth Amendment were each relied on by Mrs. Bradwell in her appeal based on alleged constitutional rights.

In *Butler v. Perry,* 240 U. S. 328, 60 L. ed. 672, 36 S. Ct. 258, affirming 67 Florida 405, 66 So. 150, the Supreme Court of the United States upheld against a challenge based upon the Fourteenth Amendment a state statute imposing a poll tax of three dollars as an alternative for

work on the roads and bridges of the county for six days of not less than ten hours each in each year when summoned to do so. The statute there challenged was limited in its application to able-bodied male persons between the ages of 21 and 45 years.

Williams v. Mississippi, 170 U. S. 213, 42 L. ed. 1012, 18 S. Ct. 583, was a criminal case in which by motion to quash the indictment the defendant, a negro, attacked the clause of the State Constitution which provided, among other things, that in order to be a juror one must be an elector.

The appellant alleged that the State Constitution required that those offering to vote should produce to the election officers satisfactory evidence that they had paid all taxes, and that in pursuance of its power to enforce this provision of the Constitution the Legislature had enacted certain statutes quoted in the footnotes providing, among other things, for the appointment of election managers and defining their duties.

The Constitution of the state provided for the payment of a poll tax, and the opinion of the Supreme Court assumes that its payment was a "condition of the right to vote." (See *Opinion,* 170 U. S., p. 222, 42 L. Ed. 1015.)

It further appeared, both from the opinion in the Supreme Court and from the case of *Ratcliff v. Beale,* 74 Miss. 247, 20 So. 865, referred to therein, that without expressly violating the inhibitions of the Fifteenth Amendment, the State of Mississippi had so framed its laws with respect to the qualifications of voters as to necessarily exclude all citizens possessing peculiarities which were generally possessed by members of the negro race.

The constitutional provisions prescribing the qualifica-

tions of electors (made by reference a prerequisite to qualification for jury service) appearing from excerpts from the Constitution and laws quoted in the margin, including:

(1) Two years residence in the state;

(2) One year's residence in election district or city or town;

(3) Absence of conviction of either of a list of nine crimes;

(4) Payment on or before February 1st of all taxes required of the voter and of which he has had an opportunity to pay for the two preceding years;

(5) Production of satisfactory evidence of payment of taxes;

(6) Taking an oath embodying all of the above elements and further that the voter will "truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this district."

(7) Ability to read any section of the Constitution of the state, or to understand the same when read to him, or give a reasonable interpretation thereof,

the motion

"further alleged that the constitutional convention (at which this Constitution was adopted) was composed of 134 members, only one of whom was a negro; that under prior laws there were 190,000 colored voters and 69,000 white voters"

(170 U. S., page 215), and complains of the method of adoption of the State Constitution and of the challenged ordinances. (Compare the allegations of paragraph 32 of the petition in the case at bar. Transcript pages 10 and 11.)

The Supreme Court refused to interfere with the conviction, holding that

> "if weakness were to be taken advantage of, it was to be done 'within the field of permissible action under the limitation imposed by the Federal Constitution,' "

and that the

> "means of it were the alleged characteristics of the negro race, not the administration of laws by officers of the State."

The Court said:

> "It cannot be said, therefore, that the denial of the equal protection of the laws arises primarily from the Constitution and laws of Mississippi."
>
> *Opinion,* 170 U. S., p. 222, 42 L. ed. 1015.

VII.

A CONSIDERATION OF THE NATURE OF POLL TAXES AND OF THE RIGHT OF THE STATE TO CLASSIFY ITS CITIZENS WITH RESPECT TO LIABILITY THEREFOR.

Section 2255, 61 *C. J.*, p. 1534, says:

> "Unless forbidden by the Constitution, capitation or poll taxes are regarded as a lawful means of raising revenue for public purposes. The nature and purpose of a poll tax is such that it cannot be applied universally, but must be by means of approximate classification. Hence, except where required by a constitutional provision, exact uniformity is not essential. Where the Constitution exempts particular classes from poll taxes, such exemption does not violate a constitutional requirement of equality of taxation."

Cooley on Taxation (4th Ed.), Section 1773, says:

> "It is generally held that the requirement in a state constitution that taxes shall be equal and uniform does not apply to poll taxes, or at least not to poll taxes in the nature of road labor. It has been held that the requirement that 'taxes raised in this state shall be as nearly equal as may be,' does not preclude the customary poll taxes and exemptions in respect to them, either because such an imposition is deemed not a tax, but instead an exercise of the police power or because the tax is not a property tax. Even if the equality and uniformity clause be deemed applicable, poll taxes do not violate it, at least under the rules governing in most jurisdictions, merely because of a reasonable classification. 'Constitutional requirement of uniformity is satisfied whenever all citizens of the same class are taxed alike.' Thus a poll tax for highway purposes limited to males between the ages of twenty-one and fifty does not violate the state constitution.
>
> "Poll taxes may be required only from males between the ages of twenty-one and sixty. So a street poll tax is 'uniform in respect to persons' although it exempts minors and females. A poll tax on males does not violate the constitutional provision because of discrimination on account of sex."

The privilege of the state with respect to classification of its subjects for poll tax purposes is well illustrated and defined by a series of exhaustive case notes in L. R. A. and Annotated Cases, to which reference will now be made.

29 L. R. A., page 404, contains an exhaustive note with respect to the nature of poll taxes, the power of the state to impose same and restrictions and limitations thereon, and the right of the state to require payment of poll taxes as a qualification of electors.

The case of *Thurston County v. Tenino Stone Quarries,* 44 Wash. 351, 87 Pac. 634, 12 Ann. Cases 314, 9 L. R. A. (N. S.) 306, has been made the foundation of exhaustive case notes in 12 Annotated Cases regarding the right of the state to classify citizens according to age with respect to poll tax liability and with respect to the right of the state to exempt persons engaged in certain occupations from liability for poll taxes.

The Supreme Court of Minnesota in the case of the *City of Faribault v. Misnee,* 20 Minn., page 396, stated that poll taxes, when authorized to be levied by the Legislature, were of such a nature that

> "it is clear that in the exercise of its right to levy poll taxes, the Legislature must deviate to some extent from any * * * Procrustean standard of equality."

This Minnesota decision was rendered in a case where the constitutionality of a poll tax exempting the members of fire companies was attacked because of an alleged unconstitutionality based upon a provision of a state constitution, as follows:

> "All taxes to be raised in this state shall be as nearly equal as may be and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state."

The Supreme Court of Minnesota in the case last cited also analyzed the comparative features of those taxes which are strictly capitation or poll taxes and that class of poll taxes which is prescribed as an alternative for road work, and said that the classes were subject to the same constitutional requirements with respect to uniformity.

Judge Cooley, in his work on taxation (4th Ed.), also

distinguishes between the two classes of poll or capitation taxes, but treats the two in the same division of his exhaustive analysis and applies the same rules thereto with respect to the privileges of classification and of exemption.

The Supreme Court of Illinois in the case of *Sawyer v. City of Alton*, 4 Ill. 127, had under consideration the constitutionality of an alternative road poll tax applicable to "all male persons between the ages of twenty-one and fifty years."

Article VIII, Section 20, of the Constitution of the State of Illinois was at that time as follows:

> "That the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession."

Against a constitutional attack based upon this article of the State Constitution, the Supreme Court held (Opinion 4, Ill. p. 130):

> "We are of the opinion the framers of the Constitution intended to direct a uniform mode of taxation on property, . . .
>
> "We cannot believe they intended that all the public burdens should be borne by those having property in possession, wholly exempting the rest of the community who, by the same Constitution, were made secure in the exercise of the rights of suffrage, and all the immunities of the citizen. If the power claimed in this case cannot be exercised, it is difficult to perceive how the right to require service on the juries, and in the militia, can be justified."

The case of *Commissioners of Ottawa County et al. v. Christian Nelson et al.*, 19 Kan. 234, 238, 241, 27 Am. Rep.

101, was an injunction suit to restrain the collection of a tax levied to retire an issue of bonds. The attack on the constitutionality of the levy was based upon Article XI, Section 1 of the State Constitution, quoted in opinion, 19 Kan., page 237, which provided:

> "The legislature shall provide for a uniform and equal rate of assessment for taxes."

The Court said (Opinion 19, Kan., p. 241):

> "Neither do we suppose that capitation taxes or poll taxes, or requirements to work on the roads, or to train in the militia, come within said Constitutional provision, although they are all taxes in one sense."

In the case of *Thurston County v. Tenino Stone Quarries,* 44 Wash. 351, 87 Pac. 634, 9 L. R. A. (N. S.) 306, 12 Ann. Cases 314, the Supreme Court of the State of Washington had under consideration a state statute levying a poll tax limited in its operation to male citizens between ages of twenty-one and fifty years.

The statute was attacked upon the ground that it was not uniform as to persons, that it exempted females, firemen and males over fifty and under twenty-one years of age, the constitutional attack being predicated upon the Fourteenth Amendment to the Federal Constitution and upon Sections 3 and 12 of Article I of the State Constitution, Section 12 of the State Constitution being as follows:

> "No law shall be passed granting to any citizen, class of citizens, or corporation, other than municipal, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens or corporations."

The Supreme Court of Washington, in the opinion, upheld the argument that

> "the nature and purpose of a poll tax is such that its application should not be universal, but by means of appropriate classifications * * * the reason for such classifications is found in the nature of the subject matter itself. * * * Other reasons for the exemption of females may be found in the fact that * * * it has always been the policy of the law to show some deference to women by reason of the physical limitations imposed by nature.
>
> "That there is an age when, by reason of immaturity the imposition of this public service or tax should not be made, is evident, as is likewise the proposition that an age may be reached when a man should not be called upon to render this character of service or pay a per capita tax.
>
> "It is contended that the fixing of the ages at twenty-one and fifty is arbitrary. This is true; but the nature of the subject matter makes it essential that arbitrary limits should be established. The same contention might be made with reference to the statute which fixes the completion of twenty-one years as a prerequisite to the privileges and obligations of legal manhood. Similar statutes limit the years during which one may become or may be required to become a member of the militia or to serve upon a jury."

The Supreme Court of Utah, in a well considered decision in the case of Salt Lake City v. Wilson (decided April 2, 1915), 46 Utah 60, 148 Pac. 1104, had under consideration a statute of the State of Utah providing among other things for an annual road poll tax of two dollars levied upon

> "every man over twenty-one and under fifty years of age, not physically incapacitated to work and not exempted by law."

The exemptions were such as were usual in such cases, namely:

> "Voluntary firemen and officers, musicians and members of the National Guard."

The constitutional attack was based in part upon Article IV, Section 1 of the State Constitution, and upon Article XIII, Section 3 of the State Constitution.

Article IV, Section 1 of the State Constitution contained exactly the same language as the first section of the Nineteenth Amendment to the Federal Constitution, and in addition thereto provided generally for equality of the sexes with respect to all civil, political and religious rights and privileges.

Article XIII, Section 3 of the State Constitution, directed that the Legislature shall provide for a uniform and equal rate of assessment and taxation, and shall, by general law, provide such regulations as shall secure a just valuation for taxation of all property

> "so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

The Supreme Court of Utah upheld the constitutionality of the state law against both attacks, saying, with respect to the right of the Legislature to classify separately its male and female citizens:

> "Why should not women be exempt from the performance of some duties which are imposed on men? Surely one need not at this day and age point out the physical differences that exist between the sexes, nor dwell upon the reasons why females, in the nature of things, cannot respond to all the demands of the state. To perform labor on the public roads or streets, or to

pay the sum of two dollars for the purpose of improving them is neither a political, religious or other civil right or privilege. * * * In practice the imposition and payment of a road poll tax by women would, in the long run, and in a large measure at least, merely add an additional burden on a large number of men, and thus instead of bringing about uniformity of burdens, would tend to the opposite result. It is a matter of general knowledge that man, during his active career, is the breadwinner for the family, and upon him must fall the direct burden of discharging the public duties, and especially so when physical exertion and strength are required. Now, to the ordinary married man, it would be utterly immaterial whether two days labor or two dollars in money were required by the state, since he would have to perform the one or pay the other. He not only would have to pay the money, but he would have to earn it.

"Entirely apart from the legal phase of the question, however, how does it benefit the married man to require his wife or his daughters to pay a road poll tax? It would only tend to place an additional burden on him without benefiting anyone. Even if counsel's contentions were conceded, therefore, he would not gain anything in a practical sense. Of course, such consequence would not control the principle he contends for if it were true that, under the constitutional provision which he invokes, women may not be put in a class by themselves. Such a classification has, however, always been made and enforced from time immemorial, and, unless prohibited in express terms in the Constitution, it is a natural and proper one to make. We can discover nothing in the constitutional provision now under consideration which prohibits such a classification, and hence the contention cannot prevail."

VIII.

AN ANALYSIS OF THE CONSTITUTIONAL ATTACK BASED UPON THE NINETEENTH AMENDMENT.

The sentence in the case of *Williams v. Mississippi,* 170 U. S. 213, beginning with the sixth line from the bottom on page 22 of the opinion, in which the Supreme Court of the United States stated that it could not in that case be said that the denial of equal protection of the laws arises primarily from the Constitution and Laws of Mississippi affords one avenue to a correct decision of the federal question here sought to be raised. There are many other avenues which lead to the same conclusion, but, before proceeding thereto, it would be well to compare the language of the first section of the Nineteenth Amendment with that of the first section of the Fifteenth Amendment and to consider further the nature of the attack made by petitioner.

The restrictive language defining the quantum of the restriction upon state sovereignty by the first section of the Fifteenth Amendment is the same as that used in the first section of the Nineteenth Amendment. The determinative factor in the restriction imposed is different. The former forbids a state to either deny or abridge the right of citizens of the United States to vote on account of "race, color or previous condition of servitude." The latter forbids a state to either deny or abridge the right of citizens of the United States to vote "on account of sex."

The limitation imposed by the Nineteenth Amendment is a right arising by virtue of the Constitution of the United States, and if this right has been violated appellant would have a substantial federal question, if he is qualified to make the challenge and if his challenge has been properly made and preserved.

For reasons that now follow, appellee respectfully insists that no substantial federal question is presented with respect to the Nineteenth Amendment, and that the contentions of appellant are without merit.

It affirmatively appears from the petition and from the laws of the State of Georgia, which are quoted in the Appendix and analyzed in the statement of the case herein, that appellant at the time he sought to register for voting was a tax defaulter, owing at least six years poll tax, amounting to one dollar per year, a statutory penalty of one dollar per year for each one of the years of default, and accumulated interest on past-due taxes in the amount of $1.50. No part of this indebtedness is attacked separately, but appellant claims a substantial federal question because of the incidental effect of his continued default upon a uniform qualification required of all electors, male and female alike, that each "shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law" before he is entitled to register and vote. As has been pointed out in the statement of the case, this pronoun "he" includes voters of both genders and has been uniformly so construed.

Appellant does not and cannot deny that payment of poll taxes as a prerequisite to registration for voting is required of all male and female electors alike, with the exception of voters who are over sixty years of age and who are blind, for both of whom separate classifications are provided. The exception with respect to persons over sixty years of age is made the subject of section XIII of this brief, and the exception with respect to blind persons is not challenged by petitioner.

Women who fail to pay the poll tax required are subject to the same penalties, and their past-due taxes bear the same rate of interest as poll taxes assessed against

male citizens. The petitioner who, so far as it appears from the petition, is an able-bodied man, has been subject to a uniform capitation tax of one dollar per year since he became twenty-one years of age, and, if he had paid this tax from year to year as required, could have registered for voting without paying any amount whatsoever at the time he sought to register.

Male and female citizens who vote are each required to pay the same tax (with the exception of blind persons), and the man and the woman who attains voting age and exercises the franchise each becomes subject to the tax on the effective date (which is January 1st) following their twenty-first birthday.

Petitioner seeks the remedy of mandamus by reason of an alleged burden which has been placed upon him solely because of his default.

The State of Georgia, which was at the time of the adoption of the Federal Constitution, according to the analysis in *Minor v. Happersett,* 88 U. S. (21 Wall.), pages 172 and 173, the most liberal among the states there listed with respect to its franchise laws, has recently, with the adoption of constitutional amendment ratified November 8, 1932, abolished her former law which required of citizens the payment of all taxes as a prerequisite for registration, and now requires only that her citizens shall contribute the sum of one dollar per year as a poll tax constitutionally allocated to educational purposes before being entitled to the elective franchise.

Appellant's contention means, in effect, either that the Nineteenth Amendment to the Federal Constitution automatically wrote into the general tax act of the State of Georgia an extension of the poll tax levy to include all female citizens or that immediately upon the adoption of the Nineteenth Amendment to the Federal Constitution

Georgia's age-old poll tax levy authorized by the Constitution of the state and re-enacted in substantially the same form for a period of approximately one hundred fifty years, immediately became void and the State of Georgia did not thereafter have the right to limit its poll tax levy to male citizens only.

The Supreme Court of Georgia, in the case of *Davis v. Ward,* 155 Ga. 748, opinion beginning on page 782 (118 S. E. 378, opinion beginning on page 394, Col. I), held that the adoption of the Nineteenth Amendment did not have the effect of writing into the general tax act then in force an extension of the poll tax theretofore required of male citizens to include the claim of female citizens theretofore exempted.

Beginning with the general tax act adopted December 19, 1923 (Ga. Laws Extraordinary Session 1923, page 20), the State of Georgia has uniformly levied a poll tax of one dollar "upon all male citizens between the ages of twenty-one and sixty years aud upon all female citizens who register for voting." The only exemption of citizens within these classes is an exemption with respect to blind persons, which is not the subject matter of attack in plaintiff's suit.

Only female citizens who do not register for voting are classified separately with respect to poll tax liability so as to be relieved of assessment therefor. This separate classification by the State of Georgia of its citizens for poll-tax purposes is not a federal question, and, if it were, petitioner, who is a male citizen, is not entitled to complain.

IX.

NO CONSTITUTIONAL RESTRICTION UPON A STATE'S POWER TO TAX WILL BE INFERRED.

Petitioner seeks, not to attack a statute creating an exemption, but a General Tax Act which has been enacted in substantially the same form from year to year, imposing a tax upon well-defined classes of citizens.

The Supreme Court of the United States, in Michigan Central Railroad v. Powers, 201 U. S. 245, opinion beginning page 292, 50 L. ed. 744, says:

> "We have had frequent occasions to consider questions of State taxation in the light of the Federal Constitution, and the scope and limits of National interference are well settled. There is no general supervision on the part of the Nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the Circuit Court in this case (page 232):
>
> " 'There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the Fourteenth Amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways, nor to the States to adopt an ironclad rule of equality, to prevent classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with National justice."

The Supreme Court of Tennessee, in the case of *Vertrees v. State Board of Elections,* 141 Tenn. 645, 214 S. W. 737, had under consideration an attack upon Chapter 139 of the Acts of 1919 of the Legislature of the State of Tennessee, which, generally speaking, authorized women of lawful age to vote at elections for municipal officers and to vote for electors for President and Vice-President, and upon all questions or provisions submitted exclusively to the vote of the electors of any municipality.

The gist of the attack was the omission of the Legislature to pass an act assessing women with the poll tax, whereas the Constitution required payment of a poll tax of

> "all male citizens of this State over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity."

Section 3 of the Act of 1919, which enfranchised women in Tennessee, required that they submit evidence of payment of poll taxes in the same manner as male voters, but the Legislature had never in fact imposed any poll tax upon women and the act in question

> "did not attempt to levy or assess any poll tax against women."

The Supreme Court of Tennessee upheld the constitutionality of the state law classifying men and women separately with respect to poll tax liability, levying a tax upon men and exempting women entirely, and recognized in the opinion the well-settled principle that a constitutional limitation upon the power of taxation will never be inferred or implied.

This Tennessee case has been cited frequently in subsequent decisions, including *Hill v. Roberts,* 142 Tenn. 215,

217 S. W. 828; *Williamson v. McLain,* 147 Tenn. 491, 249 S. W. 813; *Evans v. McCave,* 164 Tenn. 672, 52 S. W. (2d) 161.

X.

POLL TAXES IN GEORGIA ARE CONSTITUTIONALLY LIMITED TO EDUCATIONAL PURPOSES AND A CLASSIFICATION PLACING PRIMARY RESPONSIBILITY THEREFOR UPON MEN IS BOTH REASONABLE AND NATURAL.

Upon the basis of authorities cited throughout this brief, appellee contends that the question of the reasonable quality of the classification of citizens for poll tax purposes is a state question, and that no federal question is involved.

However, if the reasonableness of the classification should be material for any reason, appellee respectfully cites the following provisions of the Constitution and Code of Georgia, which furnish additional reasons for the separate classification by the State of Georgia of men and women for poll tax purposes.

Article VIII, Section I, paragraph I of the Constitution of Georgia (Georgia Code of 1933, Section 2-6601), provides for a thorough system of common schools for the education of children, and provides that

> "the expenses (thereof) * * * shall be provided for by taxation or otherwise. The schools shall be free to all children of the state."

By Article VII, Section II, paragraph III of the Constitution of the State of Georgia (Georgia Code of 1933, Section 2-5004) the authority of the Legislature of Georgia to

levy a poll tax is limited to a tax not exceeding one dollar for educational purposes.

In Georgia the husband is designated by law as the head of the family, and it is the obligation of the father to provide for the maintenance, protection and education of his children.

Section 53-501 of the Georgia Code of 1933, providing the status of the husband as the head of the family, is as follows:

> "The husband is the head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit, or for the preservation of public order."

Section 74-105 of the Georgia Code of 1933, defining the father's obligation with respect to the education of his child, is as follows:

> "Until majority, it is the duty of the father to provide for the maintenance, protection and education of his child."

The primary obligation of the father with respect to the burden of the education of his children as it existed at common law is now the law of Georgia. The Supreme Court of Georgia in the case of *Board of Education v. Purse*, 101 Ga. 422, see opinion, page 428, reviewed the history of the common law in this regard, citing Blackstone, Kent and other authorities.

Other Georgia cases upon this duty of the father include the following:

> *Hines et al. v. Mullins, Ordinary*, 25 Ga. 696 (1) 697; *Thompson v. Georgia Railway & Power Co.*, 163 Ga. 603.

XI.

CONTENTIONS BASED UPON THE NINETEENTH AMENDMENT TO THE FEDERAL CONSTITUTION ARE WITHOUT MERIT.

The liberty of the individual state regarding its right to classify citizens with respect to liability for poll tax is one question and the right of the individual state to define who shall be entitled to the privilege of the elective franchise is an entirely separate and distinct question.

The State of Tennessee and State of Utah have each upheld a classification of their citizens with respect to poll tax liability where poll taxes were assessed against men alone and women were wholly excluded from all liability therefor in cases where the indirect effect upon state laws requiring payment of poll taxes as a prerequisite to registration for voting was directly involved.

The Supreme Court of Tennessee in the case of *Vertrees v. State Board of Elections* (decided July 26, 1919), 141 Tenn. 645, 214 S. W. 737, upheld the constitutionality of the Woman's Suffrage Law adopted by that state in 1919 against a similar constitutional attack.

The Supreme Court of Utah on April 2, 1915, in the case of *Salt Lake City v. Wilson*, 46 Utah 60, 148 Pac. 1104, upheld a two-dollar poll tax levy upon "every man over 21 and under 50 years of age, not physically incapacitated to work and not exempted by law," against a constitutional attack based upon a provision of the State Constitution making unlawful discrimination between the sexes, which is much broader and more restrictive than the Nineteenth Amendment, the language of Article IV, Section 1 of the Constitution of the State of Utah being at that time as follows:

"The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this state shall enjoy equally all civil, political and religious rights and privileges."

It is the general law that

"the right of suffrage being merely a franchise or privilege, the state may, by its constitution or by statute, if the power of the legislature is not limited in this respect by the Constitution, confer the right only upon those who contribute to the support of the government by the payment of taxes."

Elections, Section 37, 20 C. J., page 75.

The privilege of the states in this regard is expressed by Ruling Case Law in the following language:

"A qualification of the right to vote frequently found in constitutions is that the voter shall have paid a tax prior to the election at which he offers to vote. There is no question but that contributing to the support of the government may be made a condition of the privilege of voting. This idea was early prevalent in our scheme of government, and only those who paid taxes could vote; that is, only those who helped to support the government. Those who had real estate or other property were rated upon it, and such as had not were assessed upon the poll. It has been held that a requirement that only those could vote who had real estate, or personal property rated at a certain figure, is not met by showing that the voter had an estate ratable at the sum specified. Real estate and other property qualifications have almost entirely been abandoned, but the poll tax is still retained in many states; and it has been held where this requirement obtains, that the payment not only of capitation taxes for the year of the election but all delinquent taxes

may be required as a preliminary to voting'' (9 R. C. L., Elections, Section 56, on page 1040).

Three decisions by the Supreme Court of the United States which have already been cited in this brief involving a construction of the equal protection clause and due process clause of the Fourteenth Amendment are in point here. These clauses of the Fourteenth Amendment confer directly and immediately upon each citizen of the United States substantial constitutional rights.

In the case of *Butler v. Perry,* 240 U. S. 328, 36 S. Ct. 258, 60 L. ed. 672, affirming 67 Florida 405, 66 So. 150, it was claimed that a sentence of thirty days in jail after conviction upon a charge of failing to work on a road under a statute which provided an alternative poll tax of three dollars imposed involuntarily servitude as a punishment for crime, contrary to the Thirteenth Amendment, and also that the enforcement of this alternative road poll tax law deprived the appellant of his liberty and property without due process of law in violation of the Fourteenth Amendment.

The statute challenged in the Butler case required:

> ''Every able-bodied male person over the age of twenty-one years, and under the age of forty-five years residing in said county for thirty days or more continuously next prior to'' a certain date to work on the roads and bridges of the several counties for six days or not less than ten hours each in each year when summoned so to do, or to provide an able-bodied substitute or, in lieu thereof to pay a poll tax of Three Dollars.

Williams v. Mississippi, 170 U. S. 213, 42 L. ed. 1012, 18 S. Ct. 583, was a motion to quash an indictment on ac-

count of the alleged incidental effect of the laws of the State of Mississippi prescribing qualifications for voters upon the laws of the state prescribing the qualifications for jurors.

The clause of the Federal Constitution relied on in the Williams case (the equal protection clause of the Fourteenth Amendment) operated directly in conferring upon the defendant a substantial federal right and it was conceded by the Supreme Court of the United States that "within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the field of expedience to obstruct the exercise of suffrage by the negro race." (See Opinion, 170 U. S. 222.)

The Supreme Court refused to give relief, however, saying in the opinion that "it cannot be said * * * that the denial of the equal protection of the laws *arises primarily* from the Constitution and Laws of Mississippi."

The due process clause of the Fourteenth Amendment is another clause of the Federal Constitution which operates directly to confer a right upon the citizen. Infringement of this right was claimed in the case of *Rawlins v. Georgia,* 201 U. S. 638, 50 L. Ed. 899, 26 S. Ct. 560, in which the plaintiffs in error challenged the array of the grand jury because of the provisions of the Georgia laws exempting from grand jury service lawyers, preachers, ministers, doctors, engineers and firemen of railroad trains and dentists.

XII.

AUTHORITY OF THE MASSACHUSETTS WOMAN-JUROR CASE.

As pointed out in the analysis, the attack made on the constitutionality of the General Tax Act of the State of Georgia resolves itself into one of two possible contentions with respect to the effect of the Nineteenth Amendment to the Federal Constitution upon the General Tax Act in force at the time the Nineteenth Amendment was ratified, and upon subsequent General Tax Acts which have been adopted in substantially the same form since that date, beginning with the General Tax Act approved at the extraordinary session of the Legislature December 19, 1923 (Georgia Laws extraordinary session 1923, p. 20). These two alternatives are the following:

(1) A claim that the Nineteenth Amendment to the Federal Constitution automatically wrote into the General Tax Act of the State of Georgia an extension of this tax to include all female citizens.

(2) A claim that upon the adoption of the Nineteenth Amendment to the Federal Constitution Georgia's age-old poll tax levy authorized by the Constitution of the state and re-enacted in substantially the same form for a period of approximately 150 years immediately became void.

That the second alternative is not true was determined by the Supreme Court of Georgia in the case of *Davis v. Warde,* 155 Ga. 748, 118 S. E. 378, see opinion of Supreme Court of Georgia, beginning last paragraph 155 Ga., p. 782, 118 S. E., p. 394. This construction by the Supreme Court of Georgia upon its own law will be accepted by the United States Supreme Court.

The first alternative is substantially the same claim which was made with respect to an automatic extension of General Laws, Chapter 234, Section 1, of the State of Massachusetts, in the case of *Commonwealth v. Welosky* (Sup. Judicial Ct. of Mass., September 10, 1931), 276 Mass. 398, 177 N. E. 656 (certiorari denied 284 U. S. 684, 76 L. ed. 578, 52 S. Ct. 201).

This law of the State of Massachusetts defined those subject to jury service in the following language:

> "A person qualified to vote for representatives to the general court shall be liable to serve as a juror."

It was contended that upon the ratification of the Nineteenth Amendment to the Federal Constitution the words in this General Law, "a person qualified to vote for representatives to the general court," necessarily included female voters who had been enfranchised by the constitutional amendment, and that the constitutional rights of the defendant arising directly under the Fourteenth Amendment to the Constitution of the United States had been violated.

The state statute in question defining persons liable for jury service had been enacted on December 22, 1920 (about four months subsequent to the ratification of the Nineteenth Amendment), and the language was substantially the same as that employed in previous statutes in the State of Massachusetts defining those eligible for jury service.

With respect to the Nineteenth Amendment and the indirect right claimed to have been conferred by the defendant, the Supreme Court of Massachusetts said:

> "The Nineteenth Amendment * * * conferred the

> suffrage upon an entirely new class of human beings. It did not extend the right to vote to members of an existing classification theretofore disqualified, but created a new class. * * * No member of the class thus added to the list of voters had ever theretofore in this commonwealth had the right to vote for candidates for offices created by the Constitution. The change in the legal status of women wrought by the Nineteenth Amendment was radical, drastic and unprecedented. While it is to be given full effect in its field, it is not to be extended by implication."

In denying that the Nineteenth Amendment had added to the newly enfranchised women voters of Massachusetts the burden of jury duty, the Supreme Judicial Court said:

> "In many respects, laws especially protective to women on account of their sex had been enacted. Most of those formerly imposing limitations even upon married women with respect to property and business had disappeared. Those were not changed by the Nineteenth Amendment. Current discussion touching the adoption of the Nineteenth Amendment related exclusively to the franchise. The words of that amendment by express terms deal solely with the right to vote."

As authority for its decision, the Supreme Court of Massachusetts cited the case of *Minor v. Happersett,* 21 Wall. 162, 22 L. ed. 627, and a group of decisions by the Supreme Court of the United States which have uniformly upheld the laws of various states providing a separate classification of female citizens with respect to burdens imposed by industry.

These cases with respect to the constitutionality of laws upholding a separate classification of women when the

contract clause of the Fourteenth Amendment is directly involved include the following:

Muller v. Oregon, 208 U. S. 412, 28 S. Ct. 324, 52 L. ed. 551, 13 Ann. Cas. 957;
Riley v. Massachusetts, 232 U. S. 671, 34 S. Ct. 469, 58 L. ed. 788;
Miller v. Wilson, 236 U. S. 373, 35 S. Ct. 342, 59 L. ed. 628, L. R. A. 1915 F 829.

XIII.

THE SEPARATE CLASSIFICATION OF CITIZENS ABOVE THE AGE OF SIXTY YEARS IS NOT UNLAWFUL.

Attention is called to the fact that no clause of the Federal Constitution is cited which is alleged to forbid directly the separate classification of citizens above the age of sixty years, or their exemptions from liability for poll taxes.

Among the various states whose requirements for registration are analyzed in the case of *Minor v. Happersett,* 88 U. S. (21 Wall.), on pages 172 and 173, Georgia alone, with the possible exception of Pennsylvania, required the payment only of a poll tax, and all of the various states' laws requiring payment of taxes of some character as a prerequisite for voting were there approved as being within the authority of the respective states.

Authorities already cited in section VII of this brief are conclusive upon the question regarding the right to classify with respect to age. Appellee will only add thereto the language of the Supreme Court of Washington in the very well-considered case of *Thurston County v. Tenino Stone*

Quarries, 44 Wash. 351, 87 Pac. 634, 12 Ann. Cas. 314, 9 L. R. A. (N. S.) 306, as follows:

> "Respondent suggests this question: 'Why should a man forty-nine years of age, living upon his farm by the side of a certain road, be compelled to pay a poll tax, while his brother, fifty-one years of age, with equally good health and strength, living upon an adjoining farm of like character and equal value, by the side of the same highway, not be subjected to such exactment?' The answer is simply this: Under such a law the older brother would have been subject to the tax for two years before the younger became of age. The latter will be exempt when he shall have completed the period through which the other has passed. The character and value of the property of each has no bearing upon the question. The underlying nature and purpose of a poll tax are disassociated entirely from any consideration of property.
>
> "That the average man between the ages of twenty-one and fifty is physically able readily to earn and contribute the amount of this tax must be conceded. That the average person in any of these classes composed, respectively, of women, males under twenty-one, and males over fifty, is by nature far less able physically to do work or earn money, is self-evident. These distinctions, based upon the laws of nature, are such as the legislature was abundantly justified in recognizing."

CONCLUSION.

Appellee respectfully calls the attention of the Court to the fact that a substantial portion of the educational fund of the State of Georgia, amounting to several hundred thousand dollars per year, has been derived ever since the adoption of the Constitution of 1868 from the poll tax levy. Both by the Constitution of 1868 and by the Constitution

of 1877, which is the present Constitution of this state, all revenue from poll taxes is allocated to be used only for educational purposes.

As has been pointed out by abundant analyses in this brief, the appellant files this suit and prosecutes this appeal and complains only of that which is the result of his own default in failing to pay from year to year the very small sum of one dollar ($1.00) per year which the sovereign State of Georgia has seen fit to require of its citizens as a prerequisite to registration for voting.

Under these circumstances, appellee respectfully insists that the appellant does not come into court under circumstances which would make it equitable to grant a mandamus for which he prays, and appellant does not now prosecute this appeal with clean hands.

United States v. Fisher, 222 U. S. 204, 32 S. Ct. 37, 56 L. ed. 165.

Respectfully submitted,

CHAS. B. SHELTON,
504 First National Bank Bldg.,
RALPH H. PHARR,
504 First National Bank Bldg.,
E. HAROLD SHEATS,
219 Hurt Building,
W. S. NORTHCUTT,
504 First National Bank Bldg.,
Attorneys at Law for Appellee.

Atlanta, Georgia,
October 1, 1937.

APPENDIX.

CONSTITUTIONAL REQUIREMENTS OF THE VARIOUS CONSTITUTIONS OF THE STATE OF GEORGIA AND LAWS PASSED BY THE GENERAL ASSEMBLY FROM TIME TO TIME RELATING TO THE QUALIFICATION OF VOTERS, THE AMOUNT OF POLL TAXES ASSESSED, AND CLASSIFICATIONS OF CITIZENS WITH RESPECT TO LIABILITY FOR POLL TAX.

The Constitution of the State of Georgia of 1789, Article IV, Section I, prescribed the qualifications of electors of the members of both branches of the General Assembly and prescribed that they should be

> "citizens and inhabitants of this State, and shall have attained to the age of 21 years, and have paid tax for the year preceding the election, and shall have resided six months within the county."
>
> See *McElreath on the Constitution of Georgia*, page 247, Section 336.

The Constitution of the State of Georgia of 1798, Article IV, Section I, prescribed the qualifications of electors of members of the General Assembly and required that they should be

> "citizens and inhabitants of this State, and shall have attained the age of 21 years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election, and shall have resided six months within the county: Provided, that in case of invasion, and the inhabitants shall be driven from any county, so as to prevent an election therein, such refugee inhabitants, being a majority of the

voters of such county, may meet under the direction of any three justices of the peace thereof, in the nearest county, not in a state of alarm, and proceed to an election, without having paid such tax so required of electors; and the persons elected thereat shall be entitled to their seats."

T. R. R. Cobb's New Digest of Laws of Georgia, page 1124;

McElreath on the Constitution of Georgia, page 264, Section 402;

Digest of the Laws of the State of Georgia (1837) *by Oliver Prince,* page 911.

On December 12, 1804, the Legislature of Georgia enacted an act entitled

"An Act to Raise a Tax for the Support of Government for the Year 1805,"

a portion of section 2 thereof relating to poll taxes being in the following language:

"The sum of thirty-one and a quarter cents shall be levied on all free male white persons of the age of 21 years and upwards in this State * * * provided, nevertheless, that in all cases of extreme indigence or infirmity, the inferior court of each county shall be and they are hereby authorized to remit the poll tax upon such indigent or infirm person claiming the same."

See *Digest of the Laws of the State of Georgia* (1837) *by Oliver Prince,* pages 842, 843;

T. R. R. Cobb's New Digest Laws of Georgia, page 1044;

Cobb's Analysis and Forms (1846), pages 674 and 675.

This act classified citizens with respect to liability for poll taxes by providing that poll taxes should be levied

only on "free male white persons of the age of 21 years and upwards" and authorized "the inferior court of each county * * * to remit the poll tax upon such indigent or infirm person claiming the same." This classification with respect to indigent or infirm persons was the first classification provided by law in Georgia with respect to citizens otherwise generally liable for the payment of poll taxes.

The General Tax Act for the year 1826 provided a new classification of male citizens not subject to payment of poll tax by reason of age in the following language:

> "From and after the passage of this Act, all free male white persons of 60 years of age and upwards shall be, and they are hereby exempted from paying poll tax."
>
> *Georgia Laws 1825,* page 171;
> *T. R. R. Cobb's New Digest Laws of Georgia,* page 1066;
> *"Laws of Georgia of force 1820-1829,"* by Arthur Foster, page 333;
> *Digest of the Laws of the State of Georgia* (1837), *by Oliver H. Prince,* page 862.

The same classification was provided by an act approved by the Georgia Legislature December 23, 1842, in the following language:

> "That from and immediately after the passage of this Act, that all free white male persons of the age of sixty years and upwards, shall be exempt from paying poll tax throughout this State; any law, usage or custom to the contrary notwithstanding."
>
> *Georgia Laws 1842,* page 171;
> *T. R. R. Cobb's New Digest Laws of Georgia,* page 1074.

By the Act approved February 22, 1850, the annual poll tax was fixed at twenty-five cents by Section 2 of this Act in the following language:

> "Each and every male citizen between the ages of twenty-one and sixty, be taxed annually the sum of twenty-five cents only."
>
> *Georgia Laws 1849-50*, page 376;
> *T. R. R. Cobb's New Digest Laws of Georgia*, page 1080.

The Constitution of the State of Georgia of 1861, Article V, Section I, prescribed that the electors of members of the General Assembly

> "shall be free white male citizens of this State; and shall have attained the age of twenty-one years; and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election; and shall have resided six months within the district or county."
>
> *McElreath on the Constitution of Georgia*, page 296, Section 542.

The Constitution of the State of Georgia of 1865, Article V, Section I, prescribed that the electors of members of the General Assembly shall be

> "free white male citizens of this state, and shall have attained the age of twenty-one years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying agreeably to law, for the year preceding the election, shall be citizens of the United States, and shall have resided six months either in the district or county, and two years within this state, and no person not qualified to

vote for members of the General Assembly shall hold any office in this state."

McElreath on the Constitution of Georgia, page 315, Section 639;
Irwin's Code, Section 4980.

The General Tax Act approved March 3, 1866, was the first to provide a poll tax in the amount of one dollar in the following language:

"In addition to the ad valorem tax on real and personal property, as specified in the Code, and assessed in the preceding section, the following specific taxes shall be levied and collected:

"1. A tax of one dollar upon each and every male inhabitant of this state on the first day of April, between the ages of twenty-one and sixty years."

Georgia Laws 1865-66, page 253.

The first constitutional requirement of the State of Georgia relating solely to poll taxes was contained in Article I, Section 29, of the Constitution of 1868, as follows:

"No poll tax shall be levied except for educational purposes, and such tax shall not exceed one dollar annually on each poll."

McElreath on the Constitution of Georgia, page 321, Section 678;
Code (1873), Section 5021.

The Constitution of 1868, Article II, Section II, prescribed anew the qualifications of electors, as follows:

"Every male person born in the United States, and every male person who has been naturalized, or who has legally declared his intention to become a citizen of the United States, twenty-one years old or upward,

who shall have resided in this state six months next preceding the election, and shall have resided thirty days in the county in which he offers to vote, and shall have paid all taxes which may have been required of him, and which he may have had an opportunity of paying, agreeably to law, for the year preceding the election (except as hereinafter provided), shall be deemed an elector; and every male citizen of the United States, of the age aforesaid (except as hereinafter provided), who may be a resident of the state at the time of the adoption of this Constitution, shall be deemed an elector, and shall have all the rights of an elector, as aforesaid: Provided, that no soldier, sailor, or marine in the military or naval service of the United States shall acquire the rights of an elector by reason of being stationed on duty in this state; and no person shall vote who, if challenged, shall refuse to take the following oath: 'I do swear that I have not given or received, nor do I expect to give or receive, any money, treat, or other thing of value, by which my vote, or any vote, is affected, or expected to be affected at this election, nor have I given or promised any reward, or made any threat, by which to prevent any person from voting at this election.' "

McElreath on the Constitution of Georgia, page 322, Section 684;

Code of Georgia (1873), Section 5027.

The third classification prescribed by legal authority in the State of Georgia with respect to poll taxes was by virtue of the act approved March 18, 1869, relating to blind persons having in their own right taxable property not exceeding in value five hundred dollars, which was in the following language:

"Be it enacted, etc. That from and after the passage of this act, all persons blind, and not having in

their own right taxable property not exceeding in value five hundred dollars, shall be exempt from the payment of poll tax."

Georgia Laws 1869, page 162;
Code of Georgia (1873), Section 809 (3);
Code (1882), 809 (3).

This classification with respect to blind persons having in their own right a limited amount of taxable property was changed beginning with the adoption of the General Tax Act for 1887 and 1888, approved December 22, 1886 (Georgia Laws 1886, page 14), so as to make the classification apply to all blind persons, which separate classification with respect to blind persons has remained the law of Georgia to this date.

Code (1911), Section 917;
Park's Code (1914), Vol. I, Section 917;
Michie's Code (1926), Section 993 (4);
Code (1933), Section 92-108.

The act approved October 21, 1870, was designed to carry into effect the Constitutional provision prescribed by Article I, Section 29 of the Constitution of 1868 above quoted, and is as follows:

"Whereas Article I, Section 29 of the Constitution of this State provides that 'no poll tax shall be levied except for educational purposes and such tax shall not exceed one dollar on each poll, which the General Assembly is authorized to assess,' and whereas certain bodies politic, incorporations, and local authorities of this State are in the habit of violating said Constitution by assessing and collecting capitation taxes as registration fees, street tax, etc. * * *

"Be it enacted by the General Assembly of the State of Georgia, that it shall henceforth be unlawful

for any county, city or corporate authority to assess or collect any capitation tax whatever, except street tax and that only after opportunity to work the streets."

Georgia Laws (1870), p. 432;
Code (1873), Section 809;
Code (1882), Section 809 (3);
Code (1895), Vol. 1, Section 775;
Code (1911), Section 1015;
Park's Code (1914), Section 1015;
Michie's Code (1926), Section 1015;
Code (1933), Section 92-109.

The Constitution of the State of Georgia of 1877, which is the present Constitution of this State, Article VII, Section II, Paragraph III, prescribes the limitations with respect to levy of poll taxes as follows:

"No poll tax shall be levied except for educational purposes, and such tax shall not exceed one dollar annually, on each poll."

McElreath on the Constitution of Georgia, p. 384, Section 1005;
Code (1882), 5183;
Code (1896), Vol. II, Section 5885;
Code (1911), Section 6555;
Park's Code, Vol. V, Section 6555;
Michie's Code (1926), Section 6555;
Code (1933), Section 2-5004.

The Constitution of the State of Georgia of 1877, which is the present Constitution of this State, Article II, Section I, Paragraph II, prescribed the qualifications of an elector in the following language:

"Every male citizen of the United States (except as hereinafter provided), twenty-one years of age, who shall have resided in this State one year next preced-

ing the election, and shall have resided six months in the county in which he offers to vote, and shall have paid all taxes which may hereafter be required of him, and which he may have had an opportunity of paying, agreeably to law, except for the year of the election, shall be deemed an elector: Provided, that no soldier, sailor or marine in the military or naval service of the United States, shall acquire the rights of an elector by reason of being stationed on duty in this State; and no person shall vote who, if challenged, shall refuse to take the following oath, or affirmation:

"'I do swear (or affirm) that I am twenty-one years of age, have resided in this State one year, and in this county six months, next preceding this election. I have paid all taxes which, since the adoption of the present Constitution of this State, have been required of me previous to this year, and which I have had an opportunity to pay, and I have not voted at this election.'"

McElreath on the Constitution of Georgia, p. 356, Section 854;
Code (1882), Section 5032;
Code (1896), Vol II, Section 5737.

On July 23, 1883, the Legislature enacted a law providing a new classification by which crippled and disabled Confederate soldiers were relieved from the payment of poll tax, sections one and two of this act being as follows:

"Be it enacted by the General Assembly of this State, That from and after the passage of this Act, all persons who have lost a limb or limbs, or the use of the same while actually engaged in the military service of the late Confederate States, shall be, and they are hereby relieved from the payment of all poll tax in this State now or hereafter to become due (Section I).

"Be it further enacted, That the several ordinaries, or other officer or officers of the county having the control and management of the county revenues, shall have full power and authority, in their respective counties, to relieve any person from the payment of any poll tax which is demanded in violation of this Act" (Section II).

Georgia Laws (1882-3), pp. 120-121.

This law was codified as Section 766 of Volume I of the Georgia Code of 1895, as follows:

"All persons who have lost a limb or limbs, or the use of the same, while actually engaged in the military service of the late Confederate States, are relieved from the payment of all poll tax in this state."

This separate classification is retained in the proviso of Section 917 of the Code of 1911, also in the proviso of Section 917 of Park's Anno. Code (1914).

This classification is retained in the proviso of Section 993 (4) of Michie's Code of Georgia of 1926 in the following language:

"Provided, this shall not be demanded of blind persons, nor crippled, maimed or disabled Confederate veterans relieved of such taxes under and by authority of Section 766, Volume 1 of the Code of 1895, * * *."

This classification has likewise been carried in all of the General Tax Acts approved from year to year to and including the act approved August 25, 1927 (Georgia Laws 1927, pages 56 and 57).

Section I of Article II of the present Constitution, including paragraph II above quoted, was amended after a two-third vote of both houses of the General Assembly of

the State of Georgia (Georgia Laws 1908, page 27) by amendment ratified at a general election of the people held October 7, 1908, by striking the entire section and substituting in lieu thereof a new section prescribing the qualifications of electors and providing for the registration of voters. Paragraphs 2, 3 and 4 of this constitutional amendment defined the qualifications of electors as follows:

> "Par. 2. Every male citizen of this state who is a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people; provided, that no soldier, sailor or marine in the military or naval services of the United States shall acquire rights of an elector by reason of being stationed on duty in this state.
>
> "Par. 3. To entitle a person to register and vote at any election by the people, he shall have resided in the state one year next preceding the election, and in the county in which he offers to vote six months next preceding the election, and shall have paid all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of the time fixed by law for the payment of such taxes.
>
> "Par. 4. Every male citizen of this state shall be entitled to register as an elector and to vote in all elections in said state who is not disqualified under the provisions of Section 2 of Article II of this Constitution, and who possesses the qualifications prescribed in paragraphs 2 and 3 of this section, or who

will possess them at the date of the election occurring next after his registration, and who, in addition thereto, comes within either of the classes provided for in the five following subdivisions of this paragraph."

Paragraph 3 of this amendment relates to payment of taxes as a prerequisite to registration for voting and is codified as follows:

Code (1911), Section 6397;
Park's Code of 1914 (Vol. V), Section 6397;
Michie's Code of 1926, Section 6397.

This requirement of the present Constitution with respect to payment of taxes was again amended by a second amendment approved by a two-thirds vote of both houses of the General Assembly (Ga. Laws 1931, page 102) and ratified by a vote of the majority of the people at a general election held November 8, 1932, so as to strike from this paragraph the words

"all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law,"

and to substitute in lieu thereof the words

"all poll-taxes that he may have had an opportunity of paying agreeably to law."

As thus amended, this section of the present Constitution of the State of Georgia is codified as Section 2-603 of the Georgia Code of 1933.

Prior to the adoption of the Nineteenth Amendment to the Constitution of the United States poll taxes had been required only of male inhabitants, the operative language

in prior years being similar to that incorporated in subparagraph 1 of Section 2 of the General Tax Act, approved August 20, 1918, which was in the following language:

> "Upon each and every male inhabitant of the State between the ages of twenty-one and sixty years on the days fixed for the return of property for taxation, a poll tax of one ($1.00) dollar, which shall be for educational purposes, in instructing children in the elementary branches of an English education only. Provided, this tax shall not be demanded of blind persons nor of crippled, maimed or disabled Confederate soldiers relieved of such taxes under and by authority of Section 766, Vol. 1 of the Code of 1895" (Georgia Laws 1918, page 44).

On August 15, 1921, the Legislature of the State of Georgia passed a General Tax Act operative beginning January 1, 1922, by which the former policy of the State with respect to requiring the payment of poll taxes by male inhabitants was changed so as to levy a poll tax of one dollar upon each and every inhabitant of the State within certain age limits. The applicable language of this General Tax Act is included in subparagraph I of Section II thereof (Ga. Laws 1921, page 39) as follows:

> "Upon each and every inhabitant of the State between the ages of twenty-one and sixty years on the days fixed for the return of property for taxation a poll tax of one ($1.00) dollar which shall be for educational purposes, in instructing children in the elementary branches of an English education only. Provided, this tax shall not be demanded of blind persons nor crippled, maimed or disabled Confederate soldiers relieved of such taxes under and by authority of Section 766, Vol. 1 of the Code of 1895."

By act approved August 21, 1922 (Ga. Laws 1922, page 21), the Legislature amended the General Tax Act, which had been adopted in the previous year (Ga. Laws 1921, pages 38 and 39; supra), by providing a separate classification of nonregistered females from payment of poll tax.

Sections I, II, III and IV of this Act, approved August 21, 1922, are as follows:

"Section I. Be it enacted by the General Assembly of the State of Georgia and it is hereby enacted by the authority of the same, that the '1st' paragraph of Section two (2) of the above recited Act be and the same is hereby amended in the following manner: By adding after the last words 'Vol. 1 of the Code of 1895 of said '1st' paragraph of said section, the following words, to-wit:

" 'Nor shall this Act be required or demanded of female inhabitants of the State who do not register for voting, provided that all females are required to pay all back poll tax due from the time they shall become eligible to vote to the date of their registration,' so that said section after being amended shall read as follows:

"Sec. 2. Upon each and every inhabitant of the State between the ages of twenty-one and sixty years on the day fixed for the return of property for taxation a poll tax of one ($1.00) dollar which shall be for educational purposes in instructing children in the elementary branches of an English education only. Provided this tax shall not be demanded of blind persons nor crippled, maimed or disabled Confederate veterans relieved of such taxes under and by authority of section 766, Vol. 1 of the Code of 1895, nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting, provided that all females are required to pay all back poll tax

due from the time they shall become eligible to vote to the date of their registration.

"Sec. 3. Provided, further, that those female inhabitants who have heretofore registered may avail themselves of the benefits of this Act, and be relieved of said tax, by applying to the tax collector of their county, and have their names stricken from said registration book; and it shall be the duty of said tax collector to issue to such females who may apply to have their names so stricken a certificate, which certificate shall bear date when issued and shall give the name of such females, and state in substance that said named female has been stricken from the registration book, and is no longer a registered voter for that year.

"Sec. 4. Provided, further, that those female inhabitants whose names have at any time been stricken from said registration book, or those who have never registered, may register for the purpose of voting, and shall be required to pay a poll tax for the year in which they may so register and shall be required to pay a poll tax for every succeeding year so long as their names remain on said registration book."

The Legislature of the State of Georgia in extraordinary session on December 19, 1923, passed a new General Tax Act, which became operative beginning January 1, 1924 (Ga. Laws, extraordinary session 1923, page 20). Paragraph I of Section II of this General Tax Act related to poll taxes and paragraph I (a) of this act related to the relief of registered female voters. Paragraph I and paragraph 1 (a) of Section II of this General Tax Act (Ga. Laws, extraordinary session 1923, page 21), are as follows:

"Paragraph 1. Upon each and every inhabitant of the State between the ages of twenty-one and sixty years, on the day fixed for the return of property for

taxation, a poll tax of one ($1.00) dollar, which shall be for educational purposes, in instructing children in the elementary branches of an English education only. Provided, this shall not be demanded of blind persons, nor crippled, maimed or disabled Confederate veterans relieved of such taxes under and by authority of Section 766, Volume 1, of the Code of 1895, nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting.

"(a) Provided further, That those female inhabitants who have heretofore registered may avail themselves of the benefits of this Act and be relieved of said tax, by applying to the tax collector of their county, and have their names stricken from said registration book; and it shall be the duty of said tax collector to issue to such females who may apply to have their names so stricken a certificate, which certificate shall bear date when issued and shall give the name of such females, and state in substance that said named female has been stricken from the registration book, and is no longer a registered voter for that year."

The General Tax Act approved 1923, above quoted, remained in effect until January 1, 1928, on which date the General Tax Act approved August 25, 1927 (Ga. Laws 1927, page 56) became operative. Paragraph 1 of Section 2 of this General Tax Act, approved August 25, 1927 (Ga. Laws 1927, page 57), related to payment of poll taxes and is as follows:

"Upon each and every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation a poll tax of $1.00 which shall be for educational purposes in instructing children in the elementary branches of an English education only. Provided, this shall not be

demanded of blind persons, nor crippled, maimed, or disabled Confederate veterans relieved of such taxes under and by authority of section 766, volume 1, of the Code of 1895, nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting."

This paragraph of the Act approved August 25, 1927, is incorporated as 92-108 of the Georgia Code of 1933.

The General Tax Act approved August 25, 1927, above quoted, continued in force until January 1, 1936, on which date the General Tax Act approved March 28, 1935, (Ga. Laws 1935, page 11), became effective. Paragraph 1 of Section 2 of this General Tax Act approved March 28, 1935 (Ga. Laws 1935, page 12), relates to payment of poll taxes and is as follows:

"There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1.00 which shall be used for educational purposes in instructing children in the elementary branches of an English education only; Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting."

Section 92-6601 of the Georgia Code of 1933 is as follows:

"If a person fails to make a return, in whole or in part, or fails to affix a value to his property, the receiver shall make the valuation and assess the tax thereon, and in all other respects make the return for the defaulting person from the best information he can obtain, and he shall double the tax in the last column of the digest against such defaulter, after

having placed the proper market value or specific return in the proper column; and for every year's default the defaulter shall be taxed double until a return is made."

Section 92-5001 of the Georgia Code of 1933 is as follows:

"All taxes due the State or any county thereof remaining unpaid on December 20th in each year shall bear interest at the rate of seven per cent, per annum from said date, and the several tax collectors shall collect the interest on such unpaid taxes and account for same in their final settlements."

PLEADINGS MATERIAL TO A CONSIDERATION OF THE ISSUES PRESENTED.

The Petition.

(References by number are to correspondingly numbered paragraphs.)

Petitioner alleges:

(3) That on March 16, 1936, he went to the office of defendant, Tax Collector, for the purpose of registering to vote in primaries and general election to be held during the year 1936 for the election of members of both houses of Congress of the United States, Governor of Georgia and members of the General Assembly.

(4) That he made application to have the voters' oath administered to him without any reference being made to the payment of poll tax because he had not paid any poll tax since he became 21 years of age, whereupon the clerk in charge of the registration book refused to comply with his demand, giving as his reason for such refusal that the only oath which the clerk was authorized to administer was the regular form of voters' oath required of all persons desiring to register, copy attached as "Exhibit A." The form of voters' oath alleged to have been required appears on pages 13 and 14 of the transcript, folio 17. That the clerk declined to administer to him the voters' oath described unless petitioner had paid all past-due taxes assessed against him which said clerk stated was in the approximate amount of thirteen dollars and fifty cents ($13.50).

(5) That he presented to defendant Suttles, Tax Col-

lector of Fulton County, a formal demand in writing that he be administered the voters' oath with no reference therein to the payment of poll tax and that he be allowed to register, copy of his formal demand being attached as "Exhibit B."

The formal demand signed by the petitioner and directed to the defendant Suttles, as Tax Collector of Fulton County, attached as "Exhibit B," appears on pages 14, 15 and 16 of the transcript, folios 18, 19 and 20, and contains the following statements:

> "I have been a bona fide resident of Fulton County, Georgia, for more than seven years. I have neither made a poll tax return to the Tax Collector or any other tax officer of this County or State during said period, nor have I paid any poll taxes to the County or State, nor have I registered to vote by reason of the fact that a poll tax receipt showing that my poll taxes for a period of seven years have been paid and also an oath that I have paid the same are required as prerequisites to registration.
>
> "I am a white male citizen, 28 years of age, and have complied with and am qualified to register and vote under all the laws of the State of Georgia except that provision of our laws which requires the payment of a poll tax and that I give an oath 'that I have paid all poll taxes which I have had an opportunity of paying agreeable to the law'; * * *."

The above language is followed by a formal demand to administer to petitioner a form of oath of petitioner's own construction, which form of oath omits from the form of oath prescribed by Section 34-103 of the Georgia Code of 1933 the words in the sixth to the ninth lines thereof as follows:

> "* * * that I have paid all poll taxes which I have

had an opportunity of paying agreeably to law; that I possess the qualification of an elector required by the Constitution."

Said form offered to be subscribed by the applicant nowhere contained any language which incorporated a statement equivalent to either of the two requirements quoted from said Section 34-103 of the Georgia Code of 1933.

(6) That defendant Tax Collector refused to comply with his formal demand and then and there confirmed said verbal refusal by denying the request and demand of petitioner in writing, a copy of said reply being attached as "Exhibit C," which exhibit appears on page 16 of the transcript, fol. 21.

(7) That defendant Tax Collector refused * * * to allow him to register upon the ground that petitioner had not paid poll taxes for the past seven years in the approximate amount of $13.50 as required under Article II, Section 1, paragraph 3 of the Constitution of Georgia, as amended, which paragraph of the Constitution is the same as Section 2-603 of the Code of Georgia of 1933. This paragraph as quoted in the petition omits the constitutional requirement as to length of residence in the county.

(8) That defendant Tax Collector refused to administer the voters' oath to petitioner and refused to allow him to vote upon the further ground that petitioner had not paid poll tax for the past seven years as required under Sections 34-103, 34-113, 34-114 and 92-158 of the Code of Georgia of 1933, quoted with slight error in the paragraph.

(In the parentheses following Sections 34-103, 34-113 and 34-114, as quoted, the reference to "Const. * * * Article II, Section I, paragraph II," is error and should read: "Article II, Section I, paragraph III.")

References in Petition to Clauses of the Federal Constitution Relied on.

(Paragraphs 9 to 16, inclusive.)

So much of Article II, Section I, paragraph III of the Constitution of Georgia (Section 2-603, Code of 1933) and of Sections 34-103, 34-113, 34-114 and 92-108 of the Georgia Code of 1933, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in the State of Georgia to register and vote for the candidates named, are alleged in general terms only to be in conflict with portions of the Constitution of the United States, which clauses of the Constitution of the United States are designated by Article, section and Paragraph, and quoted in the petition *without any statement of reason* for the alleged unconstitutionality in the respective paragraphs, as follows:

Paragraph of Petition.	Section of Federal Constitution Relied On.
(9)	Preamble.
(10)	Power of Congress to lay and collect taxes. Article I, Section 8, Paragraph 1.
(11) Transcript shows II	Power of Congress to levy Capitation tax. Article I, Section 9, Paragraph 4.
(12)	Relative rights and privileges of citizens of States. Article IV, Section 2, Paragraph 1.

(13)	Constitutional Declaration of Supreme Law, Article VI, Paragraph 2 (Section 2).
(14)	Fourteenth Amendment (General). (Designated in Petition as Article XIV, Section 1.)
(15)	Discrimination clause of 15th Amendment. (Designated in Petition as Article XV, Section 1.)
(16)	Discrimination clause of 19th Amendment. (Designated in Petition as Article XIX, Section 1.)

Other paragraphs of the petition appropriate for consideration in an analysis of the legal propositions involved are:

Paragraph 25 alleging:

> "Said poll tax laws of Georgia, not being uniform throughout the States of the Union, deprive the citizens of the United States residing in Georgia of the privileges and immunities enjoyed by the citizens of the several other States in the exercise of their inherent right of franchise to vote for persons elected and to be elected to administer the affairs of our National Government."

Paragraph 26 alleging:

> Section 92-108 of the Code of Georgia (quoted in paragraph 8 of the petition) "exempting persons above the age of sixty from the payment of said tax and granting privileges to the female inhabitants not enjoyed by the male residents between the ages of 21 and 60" is alleged to be

"discriminatory and denies to petitioner the equal protection of the laws within the jurisdiction of this State and guaranteed by the Constitution of the United States."

By paragraph 1 of plaintiff's second amendment filed May 6, 1936 (Transcript p. 24, fol. 31), paragraph 26 was amended to read as follows:

"'That section 92-108 of the Code of Georgia, enacted in pursuance of said poll tax provisions in the Constitution of this State, arbitrarily exempting persons above the age of sixty from the payment of said tax and granting special privileges to the female inhabitants not enjoyed by the male residents between the ages of twenty-one and sixty is arbitrary and unreasonable and denies to petitioner the equal protection of the laws within the jurisdiction of this State guaranteed by the Constitution of the United States.'"

Paragraphs 29 and 30 contain the only intimation in the petition as to inability to pay the tax in the language:

Paragraph 29:

"By reason of petitioner's inability and failure to pay said poll taxes required under the laws of this State as set out above, he has been denied the right to register and vote by defendant Tax Collector."

Paragraph 30:

"He is without property and dependent upon his labor for sustenance and does not have the right under the present system and his poverty stricken condition to fix the amount of his earnings."

Paragraph 17 is omitted because it is confined to an

alleged conflict with the State Constitution and the alleged objection is not preserved in appellant's statement of points to be relied on in the Supreme Court.

Paragraphs 18, 19, 20, 21, 22, 23 and 24, and paragraphs 27, 28, 32 and 33, are each omitted because containing matter not considered material to the federal questions raised, and being appropriate only for consideration by a lawmaking body.

Paragraph 31 is a conclusion of the pleader and, with the exception of the question of jurisdiction reserved for the hearing, not material here.

More References in Petition to Clauses of the Federal Constitution Relied on.

Paragraph 34, subsections (a) through (f), are even more general repetitions of constitutional questions referred to in paragraphs 9 to 14, inclusive, of the petition.

Paragraph 34 (g) is a repetition of paragraph 15, with the only statement in the original petition as to the reason assigned for alleged conflict with the Discrimination Clause in the Fifteenth Amendment, in the following language:

> "For that by reason of facts hereinabove alleged, petitioner has been and is still in a virtual condition of servitude and poverty and being thereby unable to pay said taxes, has been deprived of the inherent right to vote."

Paragraph 34 (h), (j) and (k) of the petition challenges the Georgia laws quoted for the alleged reasons:

Paragraph 34 (h):

"they grant special privileges to female inhabitants

of this State with respect to said taxes which are denied to petitioner,'' was amended by the second paragraph of plaintiff's second amendment filed May 6, 1936 (Transcript p. 24, fol. 31), so as to strike the language of the original paragraph last quoted and to substitute in lieu thereof a challenge of the quoted laws upon the following ground:

> '' 'They grant special privileges to female inhabitants of this State with respect to said taxes which are arbitrarily and unreasonably denied to petitioner.' ''

Paragraph 34 (j):

''they are discrimnatory for that they exempt persons above the age of 60, etc.,'' was amended by the third paragraph of plaintiff's second amendment filed May 6, 1936 (Transcript p. 24, fol. 31 and 32), so as to strike the language of the original paragraph last quoted and to substitute in lieu thereof a challenge of the quoted laws upon the following ground:

> '' 'They arbitrarily and unreasonably discriminate against petitioner for that they exempt persons above the age of sixty and require the payment of said tax by petitioner and other persons similarly situated.' ''

Paragraph 34 (k):

> ''The method of collecting said taxes is through the process of prohibition, injunction and restriction against the right of petitioner to register and vote in the elections above mentioned.''

Paragraph 34 (i) is omitted because it relates to an alleged conflict with the State Constitution and the right to maintain the challenge here, if available, has not been preserved.

FIRST AMENDMENT.

(Transcript pp. 20-23, fol. 25-29.)

(1) New paragraph 36:

The Georgia Constitution and laws are challenged on the ground that they are in conflict with that part of Article IV, Section 4, of the Constitution of the United States guaranteeing to each State a Republican Form of Government,

> "for that said laws * * * restrict the voting privileges * * * to eight per cent of the population, the effect of which is to maintain an autocratic rather than a republican or democratic form of government * * *."

(2) New paragraph 37:

That the Georgia laws are in conflict with the Supreme Law of the land which defines the word "Liberty" contained in the Fourteenth Amendment to the Constitution of the United States as not only embracing the right of a person to be free from physical restraint but the right to be free in the enjoyment of all his faculties as well, and

> "by reason of plaintiff's inability to pay said poll tax * * * petitioner is deprived of and denied the free enjoyment of all their faculties pertaining to the exercise of their choice in the election of the members of Congress and the President * * *."

(3) New paragraph 38:

That the right asserted * * * "being one of those 'fundamental principles of liberty and justice which lie at the base of our civil and political institutions' is embodied in the concept 'due process of law' in the

Fourteenth Amendment * * * and said right of franchise unrestricted by a 'head, capitation or direct tax' is protected under the 'due process of law' and other provisions of the Constitution of the United States herein cited * * *."

(4) New paragraph 39:

That as only 8 per cent of Georgia's population voted in 1932 while an average of 39 per cent voted in states not requiring the payment of a poll tax as a prerequisite to voting, said Georgia laws curtail and restrict electors of their right to vote in said national elections.

(5) New paragraph 40:

Said Article II, Section I, Paragraph 3, of the Constitution of Georgia (Section 2-603, Code of 1933), and said laws are void for that they are in conflict with * * * the First Amendment to the Constitution of the United States * * * for that * * * they (the grounds of objection are asserted in this paragraph, but the following analysis is believed to comprehend all and omit duplication. Letters shown at beginning of paragraphs do not appear in record).

(a) restrict and prohibit the free exercise of petitioner's right of conscience to express his opinion as to who shall be elected * * *; the right to vote is the most sacred and important petition to the government for redress of grievances that could possibly exist;

(b) grievances against the government arise through the people's representatives, * * * and to be denied the right to cast a ballot in protest * * * is to abridge and prohibit the free exercise of the right to petition;

(c) that to otherwise petition the government would be ineffectual;

(d) that under our present system of voting in Georgia our representatives in Congress and the President * * * are responsible to only eight per cent of the people of Georgia;

(e) that said Georgia laws make no provision for exempting paupers unable to pay said tax; that because petitioner is unable to pay the same * * * he is denied "due process of law" guaranteed under the Fourteenth Amendment.

(6) New paragraph 41:

This paragraph is omitted because it relates to an alleged conflict with the State Constitution and the right to maintain the challenge here, if available, has not been preserved.

SECOND AMENDMENT.

(Transcript pp. 24-26, fols. 31-34.)

The first three paragraphs of the second amendment amend certain paragraphs of the petition and have already been incorporated in statement of the petition.

(4) Amends paragraph 41, which is omitted because it related only to an alleged conflict with the State Constitution and the right to maintain the challenge here, if available, has not been preserved.

(5) New paragraph 42, which complains only of an alleged conflict with the State Constitution and with other portions of the state law, and the right to maintain the challenge here, if available, has not been preserved.

ASSIGNMENTS OF ERROR IN THE PETITION TO THE SUPREME COURT OF GEORGIA FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

(Transcript pp. 38-40, fols. 55-57.)

No. of Assignment of Error.	Clauses in Federal Constitution Relied on.
(3)	Article XIV, Section 1 (Fourteenth Amendment)? Due Process Clause.
(4)	Article XIV, Section 1 (Fourteenth Amendment)? Equal Protection Clause.
(5)	Article XIV, Section 1 (Fourteenth Amendment)? Privileges and Immunities Clause.
(6)	Article IV, Section 4. Constitutional Guarantee of Republican Form of Government.
(7)	Article XIX, Section 1 (Nineteenth Amendment). Denial or Abridgement of Right to Vote on Account of Sex.

STATEMENT OF POINTS TO BE RELIED ON IN THE SUPREME COURT.

(Transcript pp. 43-45, fol. 88-91, omitting duplication.)

(Numbers refer to paragraphs which are not numbered in record.)

(1) Judgment alleged error "in that it held constitutional a tax imposing penalties of $13.50 upon appellant, which he is unable to pay * * * as a prerequisite to voting * * * from the payment of which persons above sixty, are arbitrarily exempt and from the payment of which female inhabitants are arbitrarily exempt until they register to vote, whereas the assessment runs against appellant * * * from year to year * * * said exemptions and discriminations being arbitrary, capricious and unreasonable, having no relationship to the public health, morals or general welfare or any other matter within the so-called police power."

(2) The effect of the sustained provisions of the Georgia Constitution and statutes was to restrict the vote in the State of Georgia in the national elections of 1932 to 8 per cent of the population, while an average of 39 per cent of the total population cast their ballots in the same elections in the thirty-nine states which do not require the payment of a poll tax.

Thus the appellant and others similarly situated have been deprived of the enjoyment of the privilege of the elective franchise, inconsistently with those fundamental principles of liberty and justice which lie at the base of our civil and political institutions. The privilege of voting for federal officials is one to which the appellant is

entitled, unhampered and unrestricted by a capitation or other direct tax arbitrarily imposed through hostile state invasions of his rights as a citizen of the United States. As such citizen he is entitled to participate in the choice of electors of the President and the Vice-President of the United States and of Senators and Representatives in Congress and no state may exercise its taxing power so as to destroy this privilege.

Whatever property and other economic restrictions on the franchise may have been upheld in earlier periods of our history, the admission today that a state has the power to prevent its poorer inhabitants from participating in the choice of federal officials would be totally contrary to the contemporary spirit of American institutions, and inconsistent with the Preamble to the United States Constitution.

(3) The manner of levying and collecting the Georgia poll tax opens its purpose to suspicion, since it is not collected through levy and pursuit as are taxes intended for revenue purposes, but, rather, through the process of restriction and prior restraint on the right to vote.

(4) The equal protection clause of the Fourteenth Amendment. "Persons above sixty may register without paying any poll tax and female inhabitants may do so without paying the tax except for years in which they actually register, whereas the tax is assessed cumulatively against appellant, even as to the years in which he made no attempt to register. The classification is wholly unreasonable."

By the remaining paragraphs the judgment is alleged to be erroneous because contrary to the following portions of the Constitution of the United States:

(5) The Due Process Clause of the Fourteenth Amendment.

(6) The Privileges and Immunities Clause of the Fourteenth Amendment.

(7) The Nineteenth Amendment. "* * * said Georgia Laws * * * arbitrarily, capriciously and unreasonably abridge the right of appellant to vote by reason of sex by requiring him to pay $13.50, whereas a woman similarly situated would be exempt from the payment thereof, * * *."

(8) Article IV, Section 4, of the Constitution of the United States, which guarantees to every state a republican form of government. "* * * said Georgia Laws * * * deprive appellant and the remaining citizens of the United States residing in Georgia, who are otherwise qualified to vote but unable to pay the poll tax, of the right to vote, and * * * have established and maintained an oligarchic and autocratic rather than a republican form of government by reason of the facts recited above, * * * the Supreme Court of the United States having construed said constitutional guarantee to be an inherent and inalienable right of the people of the United States as citizens thereof."

Reserving the right to object to the sufficiency of the pleadings to raise any substantial federal question, a careful analysis of the petition and the amendments and of the order of the Court, which was the equivalent of a dismissal of the mandamus proceedings on general demurrer, will show that the various paragraphs of the petition and assignments of error and of appellant's statement of points to be relied on fall into the following groups:

Portions of Federal Constitution Referred to.	Corresponding Portion of Record.
Preamble.	Petition Paragraph 9, Transcript pp. 3, 4, fol. 4. Petition Paragraph 34 (a), Transcript p. 11, fol. 14.
Article I, Section 8, Paragraph 1. Power of Congress to lay and collect taxes.	Petition Paragraph 10, Transcript 4, fol. 5: Petition Paragraph 34 (b), Transcript p. 11, fol. 14.
Article I, Section 9, Paragraph 4. Power of Congress to lay capitation tax.	Petition Paragraph 11, Transcript p. 4, fol. 5. Petition Paragraph 34 (c), Transcript p. 11, fol. 14.
Article IV, Section 2, Paragraph 1. Relative rights and privileges of citizens of State.	Petition Paragraph 12, Transcript pp. 4-5, fol. 5-6. Petition Paragraph 25, Transcript p. 8, fol. 10. Petition Paragraph 34 (d), Transcript p. 12, fol. 14-15.
Article VI, Paragraph 2. Constitutional Declaration of Supreme Law.	Petition Paragraph 13, Transcript p. 5, fol. 6. Petition Paragraph 34 (e), Transcript p. 12, fol. 15.
Article IV, Section 4. Guaranty of Republican Form of Government.	First Amendment Paragraph 1, Adding New Paragraph 36, Transcript p. 20, fol. 25. Sixth Assignment of Error, Transcript pp. 39-40, fol. 56. Statement Paragraph 8, Transcript p. 45, fol. 91.

Portions of Federal Constitution Referred to.	Corresponding Portion of Record.
First Amendment. Rights of Conscience, Freedom of Press, etc.	First Amendment Paragraph 5, Adding New Paragraph 40, Transcript p. 22, fol. 27 and 28.
Fourteenth Amendment (General).	Petition Paragraph 14, Transcript pp. 5-6, fol. 6-7. Petition Paragraph 34 (f), Transcript p. 12, fol. 15. First Amendment Paragraph 2, Transcript p. 20, fol. 25 and 26. First Amendment Paragraph 2, Adding New Paragraph 37, Transcript pp. 20 and 21, fol. 25 and 26.
Due Process Clause of Fourteenth Amendment.	Adding New Paragraph 38, Transcript p. 21, fol. 26. Third Assignment of Error, Transcript p. 39, fol. 55-56. Statement Paragraph 5, Transcript p. 45, fol. 90.
Equal Protection Clause of Fourteenth Amendment.	Fourth Assignment of Error, Transcript p. 39, fol. 56. Statement Paragraph 4, Transcript p. 44, fol. 90.
Privileges and Immunities Clause of Fourteenth Amendment.	Fifth Assignment of Error, Transcript p. 39, fol. 56. Statement Paragraph 6, Transcript p. 45, fol. 90.

Portions of Federal Constitution Referred to.	Corresponding Portion of Record.
Fifteenth Amendment. Right to vote on account of race, color, etc.	Petition Paragraph 15, Transcript p. 6, fol. 7. Petition Paragraph 30, Transcript p. 10, fol. 12. Petition Paragraph 34 (g), Transcript p. 12, fol. 15.
Nineteenth Amendment. Equal Suffrage Amendment.	Petition Paragraph 16, Transcript p. 6, fol. 7 and 8. Petition Paragraph 26, Transcript pp. 8-9, fol. 11. Petition Paragraph 34 (h), Transcript p. 12, fol. 15. First Amendment Paragraph 2, Transcript p. 24, fol. 31. Seventh Assignment of Error, Transcript p. 40, fol. 57. Statement Paragraph 7, Transcript p. 45, fol. 90-91.

Other grounds relied on in the statement as an alleged basis of federal jurisdiction include:

Nature of Ground.	Corresponding Portion of Record.
Exemption of citizens above sixty from payment of tax.	Petition Paragraph 26, Transcript pp. 8-9, fol. 11. Petition Paragraph 34 (j), Transcript p. 12, fol. 15-16. First Amendment Paragraph 1, Transcript p. 24, fol. 31. Statement Paragraph 1, Transcript p. 43, fol. 88. Statement Paragraph 4, Transcript p. 44, folio 90.
That the Right to Vote Is a Right Arising by Virtue of the Constitution of the United States.	Petition Paragraph 29, Transcript pp. 9-10, fol. 12. First Amendment Paragraph 4; Adding New Paragraph 39, Transcript p. 21, fol. 26 and 27. Statement Paragraph 2, Transcript p. 43, fol. 88.
That to require payment of poll taxes as a prerequisite to voting is unlawful.	Petition Paragraph 34 (k), Transcript pp. 12-13, fol. 16. Statement Paragraph 3, Transcript p. 44, fol. 89-90.

SUPREME COURT OF THE UNITED STATES.

No. 9.—October Term, 1937.

Nolen R. Breedlove, Appellant, *vs.* T. Earl Suttles, as Tax Collector. } Appeal from the Supreme Court of the State of Georgia.

[December 6, 1937.]

Mr. Justice Butler delivered the opinion of the Court.

A Georgia statute provides that there shall be levied and collected each year from every inhabitant of the State between the ages of 21 and 60 a poll tax of one dollar, but that the tax shall not be demanded from the blind or from females who do not register for voting. Georgia Code, 1933, § 92-108. The state constitution declares that to entitle a person to register and vote at any election he shall have paid all poll taxes that he may have had opportunity to pay agreeably to law. Art. II, § I, par. III; Code, § 2-603. The form of oath prescribed to qualify an elector contains a clause declaring compliance with that requirement. § 34-103. Tax collectors may not allow any person to register for voting unless satisfied that his poll taxes have been paid. § 34-114. Appellant brought this suit in the superior court of Fulton county to have the clause of the constitution and the statutory provisions above mentioned declared repugnant to various provisions of the Federal Constitution and to compel appellee to allow him to register for voting without payment of poll taxes. The court dismissed his petition. The state supreme court affirmed. 183 Ga. 189.

The pertinent facts alleged in the petition are these. March 16, 1936, appellant, a white male citizen 28 years old, applied to appellee to register him for voting for federal and state officers at primary and general elections. He informed appellee he had neither made poll tax returns nor paid any poll taxes and had not registered to vote because a receipt for poll taxes and an oath that he had paid them are prerequisites to registration. He demanded that appellee administer the oath, omitting the part declaring payment of poll taxes, and allow him to register. Appellee refused.

Appellant maintains that the provisions in question are repugnant to the equal protection clause and the privileges and immunities clause of the Fourteenth Amendment and to the Nineteenth Amendment.

1. He asserts that the law offends the rule of equality in that it extends only to persons between the ages of 21 and 60 and to women only if they register for voting and in that it makes payment a prerequisite to registration. He does not suggest that exemption of the blind is unreasonable.

Levy by the poll has long been a familiar form of taxation, much used in some countries and to a considerable extent here, at first in the Colonies and later in the States. To prevent burdens deemed grievous and oppressive, the constitutions of some States prohibit or limit poll taxes. That of Georgia prevents more than a dollar a year. Art. VII, § II, par. III; Code, § 2-5004. Poll taxes are laid upon persons without regard to their occupations or property to raise money for the support of government or some more specific end.[1] The equal protection clause does not require absolute equality. While possible by statutory declaration to levy a poll tax upon every inhabitant of whatsoever sex, age or condition, collection from all would be impossible for always there are many too poor to pay. Attempt equally to enforce such a measure would justify condemnation of the tax as harsh and unjust. See *Faribault* v. *Misener,* 20 Minn. 396, 398; *Thurston County* v. *Tenino Stone Quarries,* 44 Wash. 351, 355; *Salt Lake City* v. *Wilson,* 46 Utah 60, 66, *et seq.* Collection from minors would be to put the burden upon their fathers or others upon whom they depend for support.[2] It is not unreasonable to exclude them from the class taxed.

Men who have attained the age of 60 are often, if not always, excused from road work, jury duty and service in the militia.[3] They have served or have been liable to be called on to serve the public to the extent that the State chooses to require. So far as concerns equality under the equal protection clause, there is no substantial

[1] Dowell, History of Taxation and Taxes in England, Vol. III, c. 1. Bryce, the American Commonwealth, c. XLIII. Cooley, The Law of Taxation (4th Ed.) §§ 40, 1773. Hylton *v.* United States, 3 Dall. 171, 175, 182. Short *v.* State of Maryland, 80 Md. 392, 397, *et seq.* Faribault *v.* Misener, 20 Minn. 396.

[2] Section 74-105, Georgia Code, declares: "Until majority [21 years] it is the duty of the father to provide for the maintenance, protection and education of his child."

[3] In Georgia, men are excused from road work at 50 (§ 95-401) from jury duty at 60 (§ 59-112) and from liability for service in the militia at 45 (§ 86-201; see also § 86-209).

difference between these exemptions and exemption from poll taxes. The burden laid upon appellant is precisely that put upon other men. The rate is a dollar a year, commencing at 21 and ending at 60 years of age.

The tax being upon persons, women may be exempted on the basis of special considerations to which they are naturally entitled. In view of burdens necessarily borne by them for the preservation of the race, the State reasonably may exempt them from poll taxes. Cf. *Muller* v. *Oregon*, 208 U. S. 412, 421, *et seq.* *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 63. *Riley* v. *Massachusetts*, 232 U. S. 671. *Miller* v. *Wilson*, 236 U. S. 373, *Bosley* v. *McLaughlin*, 236 U. S. 385. The laws of Georgia declare the husband to be the head of the family and the wife to be subject to him. § 53-501. To subject her to the levy would be to add to his burden. Moreover, Georgia poll taxes are laid to raise money for educational purposes, and it is the father's duty to provide for education of the children. § 74-105. Discrimination in favor of all women being permissible, appellant may not complain because the tax is laid only upon some or object to registration of women without payment of taxes for previous years. *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 447. *Rosenthal* v. *New York*, 226 U. S. 260, 270.

Payment as a prerequisite is not required for the purpose of denying or abridging the privilege of voting. It does not limit the tax to electors; aliens are not there permitted to vote, but the tax is laid upon them, if within the defined class. It is not laid upon persons 60 or more years old, whether electors or not. Exaction of payment before registration undoubtedly serves to aid collection from electors desiring to vote, but that use of the State's power is not prevented by the Federal Constitution. Cf. *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44.

2. To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate. *Minor* v. *Happersett*, 21 Wall. 162, 170 *et seq.* *Ex parte Yarbrough*, 110 U. S. 651, 664-665. *McPherson* v. *Blacker*, 146 U. S. 1, 37-38. *Guinn* v. *United States*, 238 U. S. 347, 362. The privileges and immunities protected are only those that arise

from the Constitution and laws of the United States and not those that spring from other sources. *Hamilton* v. *Regents,* 293 U. S. 245, 261.

3. The Nineteenth Amendment, adopted in 1920, declares: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." It applies to men and women alike and by its own force supersedes inconsistent measures, whether Federal or state. *Leser* v. *Garnett,* 258 U. S. 130, 135. Its purpose is not to regulate the levy or collection of taxes. The construction for which appellant contends would make the amendment a limitation upon the power to tax. Cf. *Minor* v. *Happersett,* supra, 173; *Bowers* v. *Kerbaugh-Empire Co.,* 271 U. S. 170, 173-174. The payment of poll taxes as a prerequisite to voting is a familiar and reasonable regulation long enforced in many States and for more than a century in Georgia.[4] That measure reasonably may be deemed essential to that form of levy. Imposition without enforcement would be futile. Power to levy and power to collect are equally necessary. And, by the exaction of payment before registration, the right to vote is neither denied nor abridged on account of sex. It is fanciful to suggest that the Georgia law is a mere disguise under which to deny or abridge the right of men to vote on account of their sex. The challenged enactment is not repugnant to the Nineteenth Amendment.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[4] Constitution of 1798, Art. IV, § 1 (2 Thorpe, Federal and State Constitutions, p. 800). Act of Dec. 12, 1804 (Cobb, New Digest Laws of Georgia, p. 1044).